APPENDIX

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1607

HARRY R. HUGHES, SECRETARY OF TRANSPORTATION, STATE OF MARYLAND, ET AL.,

Appellants,

v.

ALEXANDRIA SCRAP CORPORATION,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

APPEAL FILED JUNE 20, 1975
PROBABLE JURISDICTION NOTED
OCTOBER 6, 1975

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RELEVANT DOCKET ENTRIES

9/23/74—(1) Complaint and attachment.

9/24/74—(2) Summons issued.

10/16/74—(3) Motion of Defendants to Dismiss.

10/16/74—(4) Memorandum in Support of Motion to Dismiss and Exhibits.

12/2/74—(5) Plaintiff's request for hearing, Memorandum in opposition to Defendant's Motion to Dismiss, and Exhibits.

12/6/74—(6) Motion of plaintiff for preliminary injunction.

12/6/74—(7) Motion for plaintiff for three-judge court.

1/13/75—(9) Designation (Haynsworth, C. Cir. J.) of a Three Judge Court.

1/16/75—(10) Stipulation of facts between parties and attachment.

1/20/75—(11) Affidavit of Isadore Gittleson.

1/23/75—(12) Affidavit of Thomas E. Harris.

2/14/75—Hearing on Motion of Defendant to Dismiss.

2/14/75—Argued and held sub-curia.

3/12/75—(13) Opinion of Court.

3/12/75—(14) Order.

3/12/75—(15) Judgment.

4/25/75—(20) Notice of Appeal of Defendants to the Supreme Court of the United States.

WHAT MAY BE FOUND IN THE APPENDIX TO THE JURISDICTIONAL STATEMENT

The following three items may be found in the Appendix to Jurisdictional Statement which was filed with the Jurisdictional Statement: 1. The Opinion of the District Court; 2. The District Court's Order; and, 3. The Appellants' Notice of Appeal, filed April 25, 1975.

Note that the pagination in the Appendix to Jurisdictional Statement is in the form "1a, 2a, 3a, . . .," while the pagination in this Appendix is in the form "1A, 2A, 3A, . . ."

COMPLAINT

The plaintiff, Alexandria Scrap Corporation, a Virginia corporation, by its undersigned attorneys, files this Complaint for declaratory and injunctive relief, as follows:

1. This action arises under the Constitution of the United States, Article I, Section 8, Clause 3 (Commerce Clause) and Section 1 of the Fourteenth Amendment to the Constitution of the United States (Equal Protection Clause) as hereinafter more fully appears. Plaintiff is a corporation incorporated under the laws of the Commonwealth of Virginia having its principal place of business in the Commonwealth of Virginia and defendants are citizens of the State of Maryland. This action is for an injunction pursuant to the provisions of 28 U.S.C., Sections 2281 and 2284, and for declaratory relief pursuant to the provisions of 28 U.S.C., Sections 2201 and 2202. This Court has jurisdiction of this civil action pursuant to the provisions of 28 U.S.C., Sections 1331, 1332, and 1343. The matter in controversy exceeds the sum of ten thousand dollars, exclusive of interest and costs.

2. The plaintiff, Alexandria Scrap Corporation, is engaged in interstate commerce in the business of processing iron, steel, and nonferrous scrap metal into scrap iron, steel, and nonferrous scrap for sale for resmelting. Plaintiff's processing plant and principal place of business is physically located in the City of Alexandria, Commonwealth of Virginia. Plaintiff has no processing plant in Maryland but maintains an office at 302 Ellsworth Drive, Silver Spring, Maryland.

3. Plaintiff is a "scrap processor" as that term is defined in Section 5-201.1(a) of Article 66½, Annotated Code of Maryland (hereinafter referred to by Section and Article) in that it is an establishment having facilities for processing iron, steel, and nonferrous scrap metal and whose principal produce is scrap iron, steel,

and nonferrous scrap for sale for resmelting purposes. Plaintiff is licensed as a scrap processor by the Maryland Motor Vehicle Administration under Section 5-202 of Article 66½, and has been so licensed continuously since 1970. Plaintiff has participated in the "bounty program" established by Section 5-205 since that program's inception in 1970.

4. Defendant Harry R. Hughes is the Secretary of Transportation of the State of Maryland and is responsible for the operation of the Maryland Department of Transportation, of which the Maryland Motor Vehicle Administration is a part.

5. Defendant Ejner J. Johnson is the Administrator of the Maryland Motor Vehicle Administration and, subject to the authority of the Secretary of Transportation, is responsible for carrying out the powers, duties, responsibilities and functions vested by law in the said Administration.

6. Defendant Charles J. Pfaff is the Deputy Administrator for Operations of the Maryland Motor Vehicle Administration appointed by the Administrator of said Administration subject to the approval of the Maryland Secretary of Transportation. Defendant Pfaff supervises the operation of various Divisions of said Administration, including the Division of Vehicle Registration.

7. Defendant Nance J. Stamboni is the Director of the Division of Vehicle Registration, whose duties include the licensing and regulation of auto wreckers and scrap processors in the State of Maryland.

8. Under the provisions of Section 5-201 of Article 66½, it is unlawful for any person, firm, or corporation to engage in operations incident to the business of scrap metal processing in Maryland or to be eligible to receive the fee or bounty more fully set out in paragraph 11 herein without first having obtained a license as a "scrap processor" as defined in Section 5-201.1 of Article 66½. Through Section 11.02.05.45 of the Rules and Regulations of the Maryland Motor Vehicle Administration, that Administration, in the exercise of its administration discretion, has licensed scrap processors whose plants are physically located and operating outside the State of Maryland, in addition to scrap processors with plants located within the State of Maryland.

9. The plaintiff, a licensed scrap processor, is engaged in interstate commerce. A substantial portion of its business is derived from processing abandoned and inoperable motor vehicles acquired from sources located in the State of Maryland, including wreckers (as defined by Section 5-201.1(b) of Article 66½) which are licensed under the provisions of Section 5-202 of Article 66½ and motor vehicle towers which are not so licensed. These abandoned and inoperable vehicles are transported by wreckers and towers in interstate commerce from locations within Maryland to the plaintiff's plant in Virginia. Plaintiff processes such abandoned and inoperable vehicles at its Virginia plant and then sells the major portion of the processed scrap iron, steel, and nonferrous scrap to purchasers, some of whose principal places of business are located outside the boundaries of the Commonwealth of Virginia.

10. As a licensed scrap processor, the plaintiff is authorized to acquire abandoned or inoperable vehicles for which there is a certificate of title. In the absence of a certificate of title, the plaintiff as a licensed scrap processor may acquire an abandoned or inoperable vehicle without such certificate only in conformity with one or more of the following procedures:

(a) Acquisition from a licensed wrecker which has assumed free and clear title to such vehicle under Section 5-203(c) of Article 66½ following compliance with the notification procedures set forth in said Section.

(b) Acquisition from a licensed wrecker or tower or other third party which has applied to the police department of the jurisdiction in which the vehicle is situated for a certificate of authority to sell such motor vehicle for demolition, wrecking or dismantling pursuant to the provisions of Section 11-1002.2(f) of Article 66½. Following notification procedures set forth in subsections (a) and (b) of said Section 11-1002.2, and

upon issuance of the police certificate of authority, the plaintiff as a licensed scrap processor may acquire such vehicle on the basis of such police certificate in lieu of the certificate of title.

(c) Acquisition from a licensed wrecker or tower or other third party pursuant to the provisions of Section 11-1002.2(f)(5) of Article 66½ of an abandoned or inoperable vehicle for which there is no title and without notification procedures if such vehicle is over eight years old and has no engine or is otherwise totally inoperable.

11. In accordance with Section 5-205 of Article 66½, the Maryland Motor Vehicle Administration is required to pay a fee or bounty of sixteen dollars ($16.00) for each abandoned or inoperable motor vehicle formerly titled in Maryland which has been completely destroyed by a licensed scrap processor, upon presentation to the Administration of the certificate of title or other acceptable evidence of ownership for such vehicle; the manufacturer's serial or identification number plate; satisfactory proof that the vehicle has been completely destroyed, and any other information which the Administration may deem necessary. The Administration is required by said Section 5-205 to disburse one half of this fee or bounty ($8.00) to the licensed scrap processor and the other half ($8.00) to the licensed wrecker conveying ownership to the scrap processor of the vehicle to be destroyed.

12. As a licensed scrap processor, the plaintiff has received fees or bounties from the Administration for the destruction of motor vehicles formerly titled in Maryland and delivered in interstate commerce from locations in Maryland to its plant in Virginia by wreckers licensed by the Administration and by towers which are not so licensed.

13. Prior to July 1, 1974, a substantial portion of the vehicles so delivered in interstate commerce and destroyed by the plaintiff consisted of vehicles over eight years old having no engine or otherwise totally inoperable and for which there were no certificates of title and which were acquired without notification

procedures set forth in Sections 5-203 or 11.1002.2 (a) and (b) of Article 66½ (as described in paragraph 10 herein). Until that date, the Administration has paid a fee or bounty to the plaintiff for all such vehicles delivered and destroyed (and also to the licensed wrecker, if any, delivering such vehicles to the plaintiff), thereby encouraging and facilitating interstate commerce.

14. Effective July 1, 1974, by virtue of Chapter 465 of the Laws of Maryland (a copy of which is attached hereto and made a part hereof), Section 11-1002.2(f)(5) of Article 66½ was repealed and reenacted, with amendments. Under said Section, as amended, a licensed scrap processor may continue to acquire a motor vehicle without title or notification procedures if such vehicle is over eight years old and has no engine or is otherwise inoperable. In such cases, however, a scrap processor whose plant is physically located and operating in Maryland is required to execute an indemnity agreement (containing the name, address, and signature of the wrecker, tower or other person delivering such abandoned and inoperable vehicle) and to file the indemnity agreement with the Administration, which indemnity agreement and the manufacturer's serial or identification number constitutes satisfactory proof that the vehicle has been destroyed and shall be acceptable for payment of the full fee or bounty authorized by Section 5-205 of Article 66½ if such vehicle was formerly titled in Maryland.

15. Section 11-1002(f)(5) of Article 66½, as amended, further provides that abandoned and inoperable vehicles delivered to a scrap processor shall not qualify for the fee or bounty authorized by Section 5-205 of Article 66½ in the absence of an indemnity agreement.

16. In consequence of Section 11-1002.2(f)(5) of Article 66½, as amended, the Administration is authorized to pay and does pay the full bounty authorized by Section 5-205 of Article 66½ to licensed scrap processors for the destruction of motor vehicles delivered in accordance with said Section 11-1002.2(f)(5), as amended, and to licensed wreckers delivering such vehicles but only if

such vehicles are delivered to and destroyed by licensed scrap processors having plants physically located and operating in Maryland which have filed indemnity agreements with the administration. The indemnity agreement procedures set forth in Section 11-1002(f)(5), as amended, are not available to out-of-state licensed scrap processors, including plaintiff, which do not have plants physically located and operating in Maryland. Under the terms of said Section, as amended, since July 1, 1974, and continuing to the present time, neither the plaintiff nor licensed wreckers delivering to the plaintiff in interstate commerce can obtain fees or bounties with respect to abandoned or inoperative motor vehicles formerly titled in Maryland, unless the plaintiff is able to obtain a certificate of title or a police certificate of authority issued as a result of time-consuming and burdensome notification procedures. Section 11-1002(f)(5), as amended, thereby places a burden on plaintiff and other out-of-state scrap processors which destroy totally inoperable vehicles which were formerly titled in Maryland and which are disposed of in accordance with that Section, which burdens are not imposed on scrap processors whose plants are physically located and operated in the State of Maryland. The imposition of such burdens has the effect of descreasing plaintiff's ability to collect the fees or bounties payable upon the total destruction of totally inoperable motor vehicles which were formerly titled in Maryland and which were over eight (8) years old.

17. Section 11-1002.2(f)(5), as amended, validates indemnity agreements between scrap processors whose plants are physically located and operated within Maryland and a person delivering to that scrap processor a totally inoperable motor vehicle over eight (8) years old and formerly titled in Maryland. Said Section permits only Maryland scrap processors to file "indemnity agreements" with the Administration. The purpose and effect of these said "indemnity agreements" is to protect and indemnify said in-state scrap processors from claims and losses incurred as the result of said processors' acceptance of motor vehicles without

titles or with titles of doubtful or no validity, and to immunize said in-state processors from any civil or criminal liability which may attach as a result of the act of accepting said vehicles. Said protection, indemnification, and immunization is not extended to out-of-state licensed scrap processors doing business in Maryland.

18. In addition to the plaintiff's relative burden in collecting the fees and bounties authorized by Section 5-205, as compared to in-state scrap processors, Section 11-1002.2(f)(5), as amended, imposes additional burdens on the plaintiff's ability to acquire totally inoperable vehicles formerly titled in Maryland from licensed wreckers located in Maryland. Because the plaintiff is not permitted to file executed indemnity agreements with the Administration, licensed wreckers with such vehicles cannot obtain a fee or bounty for delivery of such vehicles to the plaintiff without first obtaining title or exhausting notification procedures which are a prerequisite to obtaining a police certificate. Moreover, because the plaintiff is not permitted to file executed indemnity agreements with the Administration, licensed wreckers cannot obtain statutory indemnity or immunity with respect to inoperable vehicles delivered to the plaintiff. As a consequence of Section 11-1002.2(f)(5), as amended, each licensed wrecker which would otherwise deliver such vehicles to plaintiff in interstate commerce is deterred and discouraged from doing so because it is denied fees or bounties for delivery of such vehicles (unless it submits to the administrative inconvenience and delay of notification procedures) and is further denied the statutory protection and immunity conferred by indemnity agreements filed with the Administration. By discouraging licensed wreckers from delivering to the plaintiff, said Section constitutes a substantial burden upon interstate commerce and deprives the plaintiff and other out-of-state scrap processors of a vital source of scrap iron, steel, and nonferrous scrap which normally moved in interstate commerce, prior to the reenactment of (with amendments to) such Section.

19. Conversely, Section 11-1002.2(f)(5), as amended, of Article 66½, arbitrarily discriminates against the plaintiff in that licensed scrap processors having plants physically located and operating in Maryland — unlike the plaintiff and to its exclusion — are empowered by said Section to execute indemnity agreements with licensed wreckers, and thereby eliminate the need to comply with burdensome notice procedures; to execute indemnity agreements which provide licensed wreckers with statutory protection and immunity against claims with respect to vehicles delivered to such Maryland scrap processors, thereby enabling such Maryland processors to insulate wreckers against risk claims and liability; to guarantee to such wreckers the prompt payment of the fee or bounty authorized by Section 5-205 by filing of the indemnity agreement with the Administration, thereby enabling Maryland scrap processors to provide financial inducements to licensed wreckers while depriving the plaintiff of the ability to provide same. In consequence of said Section, the plaintiff is placed at a severe competitive and economic disadvantage with Maryland scrap processors because of the arbitrary diversion of abandoned and inoperative vehicles away from the normal channels of interstate commerce. Furthermore, said Section immunizes Maryland scrap processors from liability to owners, lienholders, and claimants of vehicles delivered by licensed wreckers pursuant to indemnity agreements filed with the Administration, while denying such protection to plaintiff and other out-of-state scrap processors which are not authorized to execute and file such agreements with the Administration.

20. Section 11-1002.2(f)(5), as amended, imposes additional burdens on the plaintiff's ability to acquire abandoned and inoperative vehicles from other sources located in the State of Maryland. In addition to acquiring such vehicles from licensed wreckers, the plaintiff and other licensed scrap processors (located both out-of-state and in-state) customarily acquire such vehicles from towers and other third parties which are not licensed by the Administration to engage in the

business of automobile wrecking. A substantial portion of the plaintiff's business consists of the destruction and processing of vehicles acquired in interstate commerce from towers and other third persons in Maryland (as distinguished from licensed wreckers). Section 11-1002.2(f)(5), as amended, protects and immunizes Maryland scrap processors from legal liability and affords Maryland scrap processors a means of receiving payment of the prescribed fees or bounties with respect to vehicles delivered by such towers and third persons, whereas the said Section denies such immunity and denies fees or bounties to the plaintiff and other out-of-state scrap processors. In addition, said Section enables Maryland scrap processors to execute indemnity agreements which provide towers and other third persons with statutory protection and immunity against claims with respect to vehicles delivered to such scrap processors, but denies such statutory protection and immunity with respect to vehicles delivered to plaintiff and other out-of-state scrap processors. Furthermore, under Section 11-1002.2(f)(5), as amended, Maryland scrap processors which receive the fee or bounty paid to them by the Administration customarily and voluntarily remit a portion of such fee or bounty to towers as an inducement for the delivery of eligible motor vehicles to them. As a result of said inducements, towers are deterred and discouraged from delivering eligible motor vehicles in interstate commerce to the plaintiff and other out-of-state licensed scrap processors, which are denied the use of the indemnity agreement and are ineligible to receive any fee or bounty. Consequently, the said Section constitutes a substantial burden upon interstate commerce and deprives the plaintiff and other out-of-state processors of a vital source of scrap, iron, steel, and nonferrous scrap which normally moved in interstate commerce, prior to the reenactment (with amendments) of such Section.

21. Section 11-1002.2(f)(5), as amended, of Article 66½ imposes unequal burdens on out-of-state scrap processors such as plaintiff in their efforts to procure fees and

bounties for the destruction of automobiles formerly titled in Maryland and discourages Maryland motor vehicle wreckers and towers from delivering totally inoperative motor vehicles to out-of-state scrap processors such as plaintiff and is, therefore, unconstitutional and void as repugnant to the provisions of Article I, Section 8, Clause 3 of the Constitution of the United States for the following reasons, among others:

(a) Said Section 11-1002.2(f)(5), as amended, is a direct and indirect burden on licensed scrap processors engaged in interstate commerce and doing business in the State of Maryland, and

(b) Said Section 11-1002.2(f)(5), as amended, works an unreasonable discrimination in favor of Maryland scrap processors and against out-of-state licensed scrap processors doing business in the State of Maryland by erecting barriers to interstate commerce.

22. Said Section 11-1002.2(f)(5), as amended, is unconstitutional and void, and in direct conflict with the Equal Protection Clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States for the reason that the said statute enables scrap processors whose plants are located and operating in Maryland to obtain statutory protection and immunity from any liability which may arise from certain transactions (and to confer such protection and indemnity upon other parties to such transactions) and denies out-of-state scrap processors doing business in Maryland that same means for obtaining (and conferring) such protection and immunity from liability which may accrue as the result of the same sort of transaction.

23. The acts of the defendants, by administering and enforcing said Section in the manner described herein, have created an existing dispute between the parties as to plaintiff's present legal rights and amount to a justiciable controversy, the final and complete resolution of which may be achieved by a judgment declaring the plaintiff's rights pursuant to the provisions of 28 U.S.C., Sections 2201 and 2202.

24. Plaintiff is entitled to have this cause heard and determined by a three-judge court pursuant to the provisions of 28 U.S.C. Sections 2281, et seq. The acts of the defendants pursuant to the provisions of Section 11-1002.2(f)(5), as amended, of Article 66½ are repugnant to the Constitution of the United States and may be enjoined only after a hearing and determination of the merits of this cause by a court of three judges convened pursuant to the provisions of Title 28 U.S.C., Section 2284.

25. There is no remedy other than by this action in this Court by which the plaintiff can receive equitable and just relief, and there exists no adequate remedy at law from preventing the harm to plaintiff which will continue to flow from the administration of the challenged statute.

WHEREFORE, the plaintiff prays:

1. That a declaratory judgment be entered decreeing that said Section 11-1002.2(f)(5), as amended, is unconstitutional and void as being repugnant to the Commerce Clause of Article I, Section 8, Clause 3 of the Constitution of the United States and that said statute be held void on its face and as applied to plaintiff;

2. That a declaratory judgment be entered decreeing that Article 66½, Ann. Code Md., Section 11-1002.2(f)(5), as amended, is unconstitutional and void as being repugnant to the Equal Protection Clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States and that said statute be held void on its face and as applied to plaintiff.

3. That the defendants, their successors in office, their agents, their employees, their attorneys and each and everyone of them, be:

(a) Mandatorily compelled to accept indemnity agreements entered into by the plaintiff and other licensed scrap processors whose plants are located outside the geographic limits of the State of Maryland and to give such agreements the same effect (including payment of the fee or bounty authorized by Section 5-

205) as is given such agreements entered into by licensed scrap processors whose plants are located and operated within the geographic boundaries of the State of Maryland; and

(b) Preliminarily and permanently enjoined from withholding from or refusing to pay to the plaintiff or to any licensed wrecker delivering to the plaintiff any fee or bounty which would be ordinarily payable under Section 5-205 of Article 66½ for an abandoned and inoperable motor vehicle delivered and destroyed under the provisions of Section 11-1002.2(f)(5) if destroyed by a licensed scrap processor having a plant located and operating in Maryland; or, in the alternative, preliminarily enjoined from making payment of any fee or bounty to any licensed scrap processor or licensed wrecker under said Section 5-205 in consequence of any motor vehicle delivered and destroyed pursuant to said Section 11-1002.2(f)(5); and

(c) Preliminarily and permanently enjoined from enforcing or administering said Section 11-1002.2(f)(5) to the extent that it confers upon any scrap processor "whose plant is physically located and operating in this State" the authority to execute and file indemnity agreements and to obtain payment of fees or bounties pursuant thereto, but withholds or denies such authority to out-of-state scrap processors; and

(d) Preliminarily and permanently enjoined from enforcing or administering said Section 11-1002.2(f)(5), as amended, in any manner as to discriminate against and to impose burdens upon plaintiff in favor of licensed scrap processors having plants located and operated within the geographic boundaries of the State of Maryland, or in any other manner inconsistent with the declaratory or injunctive relief which may be granted to the plaintiff in this action.

4. That plaintiff be awarded the costs of this action, and;

5. For such other and further relief as this Court may deem just and proper in the premises.

NORMAN P. RAMSEY,
H. THOMAS HOWELL,
CARL E. EASTWICK,
SEMMES, BOWEN & SEMMES,
Attorneys for Plaintiff.

CHAPTER 465

(House Bill 782)

AN ACT concerning

Abandoned Vehicles — Scrap Processors

FOR the purpose of protecting *certain* scrap processors who destroy certain abandoned motor vehicles by authorizing them to file an indemnity agreement with the Motor Vehicles Administration and relating generally to disposition of abandoned motor vehicles.

BY repealing and re-enacting, with amendments;

Article 66½ — Vehicle Laws
Section 11-1002.2(f)(5)
Annotated Code of Maryland
(1970 Replacement Volume and 1973 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 11-1002.2(f)(5) of Article 66½ — Vehicle Laws, of the Annotated Code of Maryland (1970 Replacement Volume and 1973 Supplement) be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Article 66½ — Vehicle Laws

11-1002.2.

(f) (5) Notwithstanding any other provisions of this section, any person, firm, corporation, or unit of government upon whose property or in whose possession any abandoned motor vehicle is found, or any

person being the owner of a motor vehicle whose title certificate is faulty, or destroyed, or any agent designated and authorized by a unit of government to remove an abandoned motor vehicle from public or private property, may dispose of the motor vehicle to a wrecker or scrap processor without the title and without notification procedures of subsections (a) and (b) of this section, if the motor vehicle is over eight years old and has no engine or is [[other]] OTHERWISE totally inoperable. IN THOSE CASES ONLY, A SCRAP PROCESSOR WHOSE PLANT IS PHYSICALLY LOCATED AND OPERATING IN THIS STATE SHALL [[MAY]] EXECUTE AN INDEMNITY AGREEMENT THAT SHALL BE FILED WITH THE MOTOR VEHICLE ADMINISTRATION. THE INDEMNITY AGREEMENT SHALL CONTAIN THE NAME, ADDRESS AND SIGNATURE OF THE PERSON DELIVERING THE VEHICLE. THE INDEMNITY AGREEMENT AND THE MANUFACTURERS SERIAL OR IDENTIFICATION NUMBER SHALL BE SATISFACTORY PROOF THAT THE VEHICLE HAS BEEN DESTROYED AND SHALL BE ACCEPTABLE FOR PAYMENT OF THE FULL BOUNTY AUTHORIZED BY SECTION 5-205 IF THE VEHICLE IDENTIFIED IN THE INDEMNITY AGREEMENT WAS TITLED IN THIS STATE. OTHERWISE, FOR THE PURPOSE OF ADMINISTERING THE PROVISIONS OF THIS SECTION, THE PROVISIONS OF SECTION 5-205 SHALL NOT APPLY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1974.

Approved April 30, 1974.

* * * * * *

APPENDIX I

MOTOR VEHICLE LAWS OF MARYLAND

Article 66½

Annotated Code of Maryland

PART II. WRECKERS AND SCRAP PROCESSORS

5-201. WRECKERS AND SCRAP PROCESSORS MUST BE LICENSED.

It is unlawful for any person, firm, or corporation, on and after January 1, 1970, to store any vehicle, or body or chassis thereof, which is to be scrapped, dismantled, or destroyed, on any private property for a period in excess of thirty days, unless the person, firm, or corporation is licensed as a wrecker, as hereinafter provided, or operates an establishment as a scrap processor.

From and after January 1, 1970, licenses for scrap processors and wreckers shall be issuable only to those persons, firms, or corporations as those terms are defined in Subsection 5-201.1.

5-201.1. DEFINITION OF "WRECKER" AND "SCRAP PROCESSOR."

(a) "Scrap processor" means an establishment having facilities for processing iron, steel and nonferrous scrap metal and whose principal product is scrap iron, steel and nonferrous scrap for sale for resmelting purposes only which is licensed under the provisions of this part.

(b) "Wrecker" means every person, firm, or corporation engaged in the business of purchasing or otherwise acquiring vehicles for the benefit of the materials contained therein or parts thereof.

5-202. APPLICATION AND OTHER REQUIREMENTS FOR LICENSE.

No wrecker or scrap processor shall be entitled to obtain a license unless:

(1) Application for a license shall be made to the Department on forms prescribed by it.

(2) The applicant's said business is conducted at a fixed location;

(3) The applicant's storage area is sufficient to accommodate at least twenty-five (25) vehicles to be scrapped, dismantled, or destroyed;

(4) The applicant maintains a substantial office in which books of account and records of such business are kept;

(5) The applicant has erected a substantial and legible sign, in a location on the site of the place of business readily seen by the public, advertising the type of business conducted at such location;

(6) The fee of $15 is paid to the Department for the issuance of such wrecker's license and a fee of $100 is paid to the Department for the issuance of such scrap processor's license. Said licenses to be renewed annually;

(7) A copy of the application shall be submitted to the State Department of Health for its comments on matters pertaining to air pollution and health generally.

(8) In the case of a scrap processor, he maintains a hydraulic baler and shears, or a shredder, or such other equipment suitable for processing motor vehicle scrap as required by regulation of the Department.

5-203 NOTIFICATION OF ACQUISITION OF VEHICLES AND ASSESSMENT FOR VEHICLES NOT DESTROYED.

(a) *Notice of Acquisition of Vehicle.*—Every wrecker engaged in the business of purchasing or otherwise acquiring vehicles for the purpose of scrapping,

dismantling, or destroying, shall notify the Administration of the acquisition of such vehicles upon forms prescribed by the Administration within thirty (30) days of the date of acquiring such vehicles.

(b) *Notice of Intent to Dispose of Vehicle.*—If a wrecker acquires possession of a vehicle, or body or chassis thereof, for which there is no certificate of title, or certificate of authority and the vehicle, or body or chassis thereof, has been in the possession of the wrecker for a period of more than thirty (30) days, the wrecker shall send a notice of intent to dispose of the vehicle, or body or chassis thereof, at least ten (10) days prior thereto by registered mail to the owner and any lienholder as shown on the records of the Administration or any other person entitled to possession of the vehicle, or body or chassis thereof, if his address is known or can be reasonably obtained.

The provisions of this section which relate to the period of possession of a vehicle and the notification procedure shall not apply to abandoned vehicles which are over eight (8) years old and are totally inoperable.

(c) *When Wrecker May assume Ownership of Vehicle without Certificate of Title.*—If the owner of the vehicle, or body or chassis thereof, or any other person entitled thereto, or any leinholder having an interest therein fails to recover or claim the vehicle, or body or chassis thereof, within the ten (10) day period specified in the aforementioned notice, the wrecker having possession of the vehicle, or body or chassis thereof, shall take and assume free and clear title to the said vehicle, or body or chassis thereof, without the necessity of securing a certificate of title, as is required by the provisions of this article. The assumption of ownership by the wrecker shall be certified on forms prescribed by the Department and forwarded to it within five (5) days from the date ownership has been assumed by the wrecker.

If the address of the owner, leinholder, or any other person entitled to possession of the vehicle, or body or chassis thereof, for which there is no certificate of title,

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cannot be reasonably obtained from the records of the Department, or by the exercise of reasonable diligence, the wrecker having possession of the vehicle or body or chassis thereof shall take and assume free and clear title to the vehicle, or body or chassis thereof, after the aforementioned thirty (30) day period. The assumption of ownership by the wrecker shall be certified on forms prescribed by the Department and forwarded to it within five (5) days from the date ownership was assumed by the wrecker.

(d) *Authority of Department to Prescribe Forms and Promulgate Rules and Regulations.*—The Administration shall prescribe forms and have the authority to promulgate rules and regulations pertaining to the manner in which a wrecker or scrap processor notifies the Administration of receipt of a vehicle or body or chassis thereof to be scrapped, dismantled, or destroyed and the manner in which an assessment is placed upon a wrecker if a vehicle or body or chassis thereof has a designated model year in excess of ten years, as determined by a national publication of used car values adopted for use by the Administration is not scrapped, dismantled, or destroyed within one year from the date a wrecker acquires possession of the vehicle or body or chassis thereof, and the assessment shall be in the amount of $5 for each and every six (6) month period the vehicle or body or chassis thereof remains not scrapped, dismantled, or destroyed. For the purpose of administering this subsection as it relates to assessments, vehicles shall not include trucks, truck tractors or trailers.

5-203.1. CONVEYANCE OF TITLE TO WRECKER OR SCRAP PROCESSOR.

Any owner of a vehicle, or body or chassis thereof, which is to be scrapped, dismantled, or destroyed, who sells or transfers the vehicle, or part thereof, to a wrecker or scrap processor as defined in this article, shall endorse an assignment and warranty of title on the certificate of title for such vehicle, or body or chassis thereof, and deliver the certificate of title at the

time of sale or transfer to the wrecker or scrap processor, whether said certificate of title was issued by this State or any other state.

Any person, firm or corporation holding an assigned certificate of title or any other such evidence of ownership acceptable to the Department for a vehicle to be destroyed, who shall sell or transfer the vehicle to a wrecker or scrap processor, may endorse a reassignment and warranty of title upon forms prescribed by the Department without the necessity of previously securing a certificate of title in the name of the assignee.

5-203.2. SCRAP PROCESSOR NEED NOT OBTAIN TITLE CERTIFICATE.

Any scrap processor who purchases or otherwise acquires a motor vehicle for purpose of wrecking, dismantling, or demolition is not required to obtain a certificate of title for such motor vehicle in his own name. After the motor vehicle has been demolished, processed or changed so that it physically is no longer a vehicle, the scrap processor shall surrender the certificate of title for cancellation or any other evidence of ownership acceptable to the Department. The Department shall issue such forms, rules, and regulations as are appropriate governing the surrender of auction sales receipts and certificates of title.

5-204. SCRAP PROCESSOR TO FORWARD TITLE TO DEPARTMENT.

Every scrap processor, licensed under this article, may forward the certificate of title, issued under this article, upon which an assignment or reassignment and warranty of title has been properly endorsed, or other acceptable evidence of ownership for a vehicle formerly titled in this State, to the Department after the scrap processor has completely destroyed the vehicle described on the certificate of title or evidence of ownership. The Department shall have the right to determine acceptability of such evidence of ownership.

5-205 DEPARTMENT TO PAY FEE FOR VEHICLES TOTALLY DESTROYED.

The Administration shall pay a fee of sixteen dollars ($16.00) for each vehicle which has been completely destroyed upon presentation by the scrap processor to the Administration of the certificate of title or other acceptable evidence of ownership for a vehicle formerly titled in this State, the manufacturer's serial or identification number plate, satisfactory proof that the vehicle has been completely destroyed and any other information the Administration may deem necessary. In all cases where one of the counties of this State or Baltimore City receives reimbursement for a vehicle pursuant to the provisions of Section 11-1002.2 of this Article, the Administration shall pay the above fee even if the vehicle totally destroyed was never titled in this State. The administration shall disburse this fee in the following manner: eight dollars ($8.00) to a scrap processor and eight dollars ($8.00) to the wrecker conveying ownership of the vehicle to be destroyed to such scrap processor. Scrap processors and wreckers must be licensed under this part to be eligible for this fee. No fee shall be paid by the Administration for any vehicle destroyed by any scrap processor prior to July 1, 1970, and the Administration shall require satisfactory evidence confirming the date that such vehicle was destroyed in the form and manner prescribed by the Administration.

5-206. WRECKER AND SCRAP PROCESSOR TO MAINTAIN RECORDS.

A wrecker and a scrap processor shall keep an accurate and complete record of all motor vehicles purchased or received by him in the course of his business. These records shall contain the name and address of the person from whom each motor vehicle was purchased or received and the date such purchases or receipts occurred and such other information that may be required by the Department. The records shall be open for inspection by any police department at any

time during the normal business hours. Any record required by this section shall be kept by the scrap processor for at least three years after the transaction to which applies.

5-207. AUTHORITY OF DEPARTMENT TO PROMULGATE RULES AND REGULATIONS.

The Department may promulgate other rules and regulations and prescribe forms necessary to administer the provisions of this part relating to wreckers and scrap processors.

5-208. STORAGE OF VEHICLES.

It is unlawful for a wrecker to store vehicles for salvage or demolition at a density of more than 250 vehicles for any one acre.

5-209. UNIFORMITY OF PROVISIONS.

It is the sense of the General Assembly that the provisions of this subtitle shall be uniform throughout the State and shall supersede any local law inconsistent herewith.

5-210. VIOLATION OF PART II.

Violation of any of the provisions of this part shall be deemed a misdemeaner.

* * * * * *

PART VI. SUSPENSION AND REVOCATION OF WRECKER'S AND SCRAP PROCESSOR'S LICENSES

5-601. WHEN WRECKER'S OR SCRAP PROCESSOR'S LICENSE MAY BE REFUSED, SUSPENDED, OR REVOKED.

The Department may refuse, suspend, or revoke any license issued under this article relating to wreckers and scrap processors if the Department finds that the licensee is violating any provisions of this article or the

applicable rules and regulations promulgated by it or the State Department of Health.

5-602. HEARING REQUIRED PRIOR TO SUSPENSION OR REVOCATION.

The Department shall suspend or revoke the license of a wrecker or scrap processor only after a hearing. At least ten (10) days prior to the date set for the hearing, the Department shall notify the licensee in writing of any charge made and afford the licensee an opportunity to be heard in person and by counsel in reference thereto. The written notice shall be served by delivery to the licensee by registered mail to the business address of the licensee of record with the Department. The hearing on the charges shall be at time and place the Department prescribes. The Department may subpoena and bring before it any person or documents and take testimony of any person under oath in the manner prescribed in judicial procedure in the courts of this State in civil cases, with the fees and mileage provided by law in civil cases.

5-603. SUSPENSION OR REVOCATION FOR VIOLATION OF ARTICLE.

If the Department determines that any licensee is guilty of any violation of the aforesaid provisions of this article or rules and regulations the authority of the licensee to do business may be revoked or suspended for a period of time determined by the Department.

5-604. APPLICANT FOR LICENSE MAY REQUEST HEARING IF LICENSE REFUSED.

If the license is refused, the applicant, within ten (10) days from the date of notice or refusal is mailed, may request a hearing. The hearing must be held within thirty (30) days of the date of request, and the Department must render a decision within twenty (20) days following the hearing.

* * * * * *

PART X. STOPPING, STANDING AND PARKING

11-1002. ABANDONED OF MOTOR VEHICLE.

Any person who abandons a motor vehicle on any public property or on any property other than his own without the permission of the owner or lessee of such property is guilty of a misdemeanor.

11-1002.1. OFFICERS AUTHORIZED TO REMOVE ABANDONED AND ILLEGALLY STOPPED OR PARKED VEHICLES.

A police department may take into custody any motor vehicle found abandoned. For this purpose, a police department may employ its own personnel, equipment, and facilities or hire persons, equipment, and facilities for removing, preserving, and storing abandoned motor vehicles.

11-1002.2. DISPOSITION OF ABANDONED VEHICLES.

(a) *Notice to Last Known Registered Owner.*—A police department which takes into custody an abandoned motor vehicle shall, as soon as reasonably possible and in any event within seven days thereof, by registered mail, return receipt requested, signed by the addressee, notify the last known registered owner of the motor vehicle and all lienholders as shown on the records of the Department that the vehicle has been taken into custody. The notice shall describe the year, make, model, and serial number of the abandoned motor vehicle; set forth the location of the facility where the motor vehicle is being held, inform the owner and any lienholders of their right to reclaim the motor vehicle within three weeks after the date of the notice, upon payment of all towing, preservation and storage charges resulting from placing the vehicle in custody, and state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all lienholders of all right, title, and interest in the vehicle and consent to the sale of the abandoned motor vehicle at a public auction.

(b) *Notice By Publication.*—If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, or if the registered mail notice required by subsection (a) of this section is returned as undeliverable, notice by one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this section. The notice by publication may contain multiple listings of abandoned vehicles. Such notice shall have the same contents as those required by registered mail, and shall be published within fifteen days of the taking into custody of the motor vehicle except that in the case of said notice by reason of the return as undeliverable of notice by registered mail the notice shall be published within seven days of such return.

(c) *Effect Of Failure To Reclaim Vehicle.*—The consequences and effect of failure to reclaim an abandoned motor vehicle shall be as set forth in a valid notice given pursuant to subsections (a) and (b).

(d) *Sale; disposition of proceeds.*—If an abandoned motor vehicle has not been reclaimed as provided for in subsections (a) and (b) the police department shall sell it at public auction. The purchaser of the motor vehicle shall take title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department, and shall be entitled to register the purchased vehicle and receive a certificate of title. The sales receipt at such a sale shall be sufficient title only for purposes of transferring the vehicle to a scrap processor for demolition, wrecking, or dismantling, and in such case, no further titling of the vehicle is necessary. From the proceeds of the sale of an abandoned motor vehicle the police department shall reimburse itself for the expenses of the auction, the costs of towing, preservation, and storing the vehicle which resulted from placing the abandoned motor vehicle in custody, and all notice and publication costs

incurred pursuant to subsections (a) and (b), of this section. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for ninety days, and then shall be deposited with the State Treasurer in the Abandoned Vehicles Fund, as provided for in Subsection 3-830.

Whenever the proceeds of a sale of such other abandoned vehicles are not sufficient to meet the expenses incurred, the Administration shall reimburse the several counties of the State and Baltimore City the sum of ten dollars ($10.00) from the fund established in Subsection 3-830 of this article for each vehicle taken into custody by a county, or Baltimore City, when such vehicle is sold for the purpose of total destruction and when acceptable evidence is presented to the Administration that such vehicle has been totally destroyed.

The reimbursement of expenses from the Abandoned Vehicles Fund to the several counties and Baltimore City shall only apply to abandoned vehicles which are removed from public or private property of this State on and after July 1, 1972.

(e) *Vehicles abandoned in garages, etc.*—Any motor vehicle left for more than ten days in a garage operated for commerical purposes after notice by registered mail, return receipt requested from the addressee, to the owner to pick up the vehicle, or for more than ten days after the period when, pursuant to contract, the vehicle was to remain on the premises, and any motor vehicle left for more than ten days in the garage by someone other than the registered owner or left by a person authorized to have possession of the motor vehicle under a contract of use, service, storage, or repair, shall be deemed an abandoned vehicle and reported by the garage keeper to the police department. Any garage keeper who fails to report the possession of the vehicle within ten days after it becomes abandoned within the meaning of this subsection, no longer has any claim for servicing, storage or repair of the vehicle. All abandoned vehicles left in garages may be taken into custody by the police department and sold in accordance with the procedures set forth in this section, unless

the motor vehicle is reclaimed and garage keeper is paid. The proceeds of the sale shall be applied first to the garage keeper's charges for servicing, storage, or repair, and any surplus proceeds shall be distributed in accordance with section (d) of this section. Nothing in this subsection shall be construed to impair any lien of a garage keeper under the laws of this State, or the right of a lienholder to foreclose. For the purposes of this subsection "garage keeper" means any operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair, or maintenance of motor vehicles.

(f) *Disposition of vehicle to scrap processor or wrecker.*—(1) Any person, firm, corporation, or unit of government upon whose property or in whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost or destroyed, may apply to the police department of the jurisdiction in which the vehicle is situated for authority to sell, give away or dispose of the vehicle to a scrap processor or wrecker.

(2) The application shall set out the name and address of the applicant, the year, make, model, and serial number of the motor vehicle, if ascertainable, together with any other identifying features, and shall contain a concise statement of the facts surrounding the abandonment, or that the title of the motor vehicle is lost or destroyed, or the reasons for the defect of title. The applicant shall execute an affidavit stating that the facts alleged therein are true and that no material fact has been withheld.

(3) If the police department finds that the application is executed in proper form and shows that the motor vehicle has been abandoned upon the property of the applicant, or if it shows that the motor vehicle is not abandoned but that the applicant appears to be the rightful owner, the police department shall follow the notification procedures set forth in subsections (a) and (b) of this section.

(4) If an abandoned motor vehicle is not reclaimed in accordance with subsections (a) and (b), the police department shall give the applicant a certificate of authority to sell the motor vehicle to any wrecker or scrap processor for demolition, wrecking, or dismantling. The wrecker or scrap processor shall accept such certificate in lieu of the certificate of title to the motor vehicle.

(5) Notwithstanding any other provisions of this section, any person, firm, corporation, or unit of government upon whose property or in whose possession any abandoned motor vehicle is found, or any person being the owner of a motor vehicle whose title certificate is faulty, or destroyed, or any agent designated and authorized by a unit of government to remove an abandoned motor vehicle from public or private property, may dispose of the motor vehicle to a wrecker or scrap processor without the title and without notification procedures of subsections (a) and (b) of this section, if the motor vehicle is over eight years old and has no engine or is otherwise totally inoperable. In those cases only, a scrap processor whose plant is physically located and operating in this state shall execute an indemnity agreement that shall be filed with the Motor Vehicle Administration. The indemnity agreement shall contain the name, address and signature of the person delivering the vehicle. The indemnity agreement, and the manufacturers serial or identification number shall be acceptable for payment of the full bounty authorized by section 5-205 if the vehicle identified in the indemnity agreement was titled in this state. Otherwise, for the purpose of administering the provisions of this section, the provisions of section 5-205 shall not apply.

(g) *Definitions.*—For the purposes of this section the following shall apply:

(1) "Police department" means the Department of Maryland State Police or any police department of a county, city or town and in Baltimore City the agency designated by the board of estimates.

(2) "Abandoned motor vehicle" means a motor vehicle, trailer or semi-trailer that is inoperable and is left unattended on public property for more than forty-eight hours, or a motor vehicle, trailer or semi-trailer that has remained illegally on public property for a period of more than forty-eight hours, or a motor vehicle, trailer or semi-trailer that has remained on private property without the consent of the owner or person in control of the property for more than forty-eight hours.

* * * * * *

APPENDIX II

STATE MOTOR VEHICLE ADMINISTRATION

11.02.05 REGULATIONS GOVERNING WRECKERS, SCRAP PROCESSORS AND ABANDONED VEHICLES.

.01 LICENSING OF WRECKERS. No person, firm or corporation shall be entitled to obtain a wrecker's license, under the applicable provisions of Article 66½, of the Annotated Code of Maryland, unless the applicant for such license meets the requirements set forth herein. (See Figure 1.)

.02 Each wrecker's location shall be subject to inspection by an authorized representative of the State Motor Vehicle Administration prior to approval of such application for a wrecker's license.

.03 Only one wrecker's license will be permitted for any one location.

.04 All additional locations shall also be subject to inspection by an authorized representative of the State Motor Vehicle Administration and shall meet all requirements of the primary location as set forth herein.

.05 The storage area of such wrecker shall be of a size and dimension as to be capable of storing at least twenty-five (25) vehicles standing as single units.

.06 Vehicles shall not be stored more than two (2) high and in a safe and secure manner, readily accessible to inspection.

.07 There shall be not more than two hundred and fifty (250) vehicles stored per acre of the wrecker's storage area.

.08 A current and valid Trader's License must be issued to the wrecker for the wrecker's location, indicated in the application by the political subdivision of that location. The location must also comply with all local ordinances and zoning regulations.

.09 The Trader's License must be displayed on the premises of the wrecker in a conspicuous place.

.10 The office must be housed at the wrecker's fixed location which is adequate and appropriate for the business so conducted.

.11 The office must be equipped with necessary facilities to conduct the wrecker's business.

.12 The premises and the books and records regarding purchases, sales, transfers of ownership, and other material of the wrecker shall be available for inspection during regular business hours by authorized representatives of the State Motor Vehicle Administration or any police departments.

.13 Every applicant for a wrecker's license shall submit to the State Motor Vehicle Administration an Initial Inventory Report and Subsequent Inventory Reports upon forms and in such a manner as may be prescribed by the agency. (See Figure 2.)

.14 Such Initial Inventory Report and Subsequent Inventory Reports shall include information

on every vehicle, body, or chassis stored by such applicant at the location for which the license was issued.

.15 Every vehicle, body, or chassis listed on the Initial Inventory Report or Subsequent Inventory Reports shall be tagged with an identification device which shall be furnished by the State Motor Vehicle Administration. The identification number listed for the vehicle described on either the Initial Inventory Report or the Subsequent Inventory Reports shall agree with the identification device which has been affixed to the vehicle.

.16 The identification device shall be fastened securely to the vehicle in such a position as prescribed by this agency.

.17 The State Motor Vehicle Administration shall issue a Certificate of Disposal to licensed wreckers for every vehicle, body, or chassis stored by such wrecker provided the following requirements are fully complied with. (See Figure 3.)

.18 The certificate of title or other ownership documents acceptable to the State Motor Vehicle Administration, including the Assumption of Ownership, Form VR-18, Form VR-20 and Form VR-95, properly executed, must accompany all Inventory Reports. (See Figures 4, 5 and 6.) The serial number and title number of each document shall compare exactly with each vehicle body or chassis shown on the inventory report.

.19 Every licensed wrecker shall submit to this agency an Inventory Report listing all vehicles subsequently acquired or disposed of after the submission of the initial inventory report or subsequent inventory reports. Such inventory report shall be on forms and be submitted in such a manner as prescribed by the State Motor Vehicle Administration. (See Figure 2.)

.20 For the purpose of administering the requirements of this chapter, the Inventory Report must be submitted to this agency on or before the 30th day of each month.

.21 If the wrecker does not acquire or dispose of any vehicles, bodies, or chassis during any report month, he shall note this fact on the Monthly Inventory Report and shall forward the report to the State Motor Vehicle Administration.

.22 The Certificate of Disposal shall consist of four (4) parts and each copy shall be distributed as follows: (See Figure 3.)

.23 Copy Number One — Upon conveyance of ownership of a vehicle to a scrap processor or to anyone other than a scrap processor after a proper assignment to such scrap processor or non-scrap processor, this copy shall be forwarded to the State Motor Vehicle Administration on the day such assignment was made by the wrecker.

.24 Copy Number Two — Shall be presented to a scrap processor immediately upon conveyance of ownership from the wrecker. If assigned to a non-scrap processor, this copy must be forwarded to the State Motor Vehicle Administration with Copy Number Three. If assigned to a scrap processor, this copy may be used by the processor to petition the State Motor Vehicle Administration for payment of the authorized bounty upon certification of destruction of the vehicle.

.25 Copy Number Three — If assigned to a scrap processor, this copy is to be retained as a part of the scrap processor's file. If assigned to a non-scrap processor, this copy must be forwarded to the State Motor Vehicle Administration with Copy Number Two.

.26 Copy Number Four — Shall be maintained by the wrecker as a part of his wrecker's file.

.27 The assignment of ownership on the Certificate of Disposal must be completed in detail and signed by the assigning wrecker upon transfer on interest to a licensed scrap processor or to anyone other than a licensed scrap processor.

.28 OMITTED.

.29 Whenever a licensed wrecker shall acquire a vehicle, body or chassis that does not have a manufacturer's identification or serial plate, such licensed wrecker shall:

.30 Make application to the State Motor Vehicle Administration for a Junked Vehicle Sticker upon forms and in such a manner as may be prescribed by the agency. (See Figure 7.)

.31 Have the vehicle available on the premises of the licensed wrecker in such a position so that it may be readily inspected by an authorized representative of the State Motor Vehicle Administration prior to the issuance of the Junked Vehicle Sticker by this agency.

.32 The State Motor Vehicle Administration may issue a Junked Vehicle Sticker to any motor vehicle stored by any licensed wrecker, when the wrecker can produce acceptable evidence of ownership.

.33 The license issued to any wrecker by the State Motor Vehicle Administration, under the applicable provisions of Article 66½, of the Annotated Code of Maryland, shall be displayed in a conspicuous place in the office of the wrecker where such business is conducted. (See Figure 8.)

.34 Every licensed wrecker shall use the license number from the license so issued upon all agency forms, in the area provided for such number, which relates to the licensing of wreckers.

.35 LICENSING OF SCRAP PROCESSORS. No person, firm or corporation, engaged in the business of the destruction of vehicles, bodies or chassis, shall be entitled to obtain a license as a scrap processor, under the applicable provisions of Article 66½, of the Annotated Code of Maryland, unless the applicant for such license meets the requirements set forth hereinafter. (See Figure 1.)

.36 Each scrap processor's location shall be subject to inspection by an authorized representative of the State Motor Vehicle Administration prior to the issuance of such license.

.37 Only one scrap processor's license will be permitted for any one location.

.38 All additional locations shall be subject to all of the licensing requirements of the primary location.

.39 A current and valid Trader's License must be issued for the scrap processor's location, indicated in the Application for a Scrap Processor's License, by the political subdivision of that location.

.40 The Trader's License must be displayed on the premises of the scrap processor in a conspicuous place.

.41 The office must be housed at the scrap processor's fixed location in a substantial building which is appropriate for the business so conducted, not withstanding the provisions outlined in paragraph .45 of this chapter.

.42 The office must be equipped with office furniture and filing cabinets to reasonably conduct the scrap processor's business.

.43 The premises and books and records regarding purchases, sales, transfers of ownership and other related material shall be available for inspection by an authorized representative of the State Motor Vehicle Administration or law enforcement agencies.

.44 The scrap processor must be equipped with a hydraulic bailer, and shears or a shredder or any other such equipment that may be approved by the State Motor Vehicle Administration. Any other equipment, so approved, shall have the capability of rendering the scrap acceptable to any smelting operation without any further processing by the scrap processor.

.45 The State Motor Vehicle Administration in the exercise of its administrative discretion, may license scrap processors not geographically located within the boundaries of the State of Maryland, provided that such scrap processor maintains an office in the State of Maryland, that shall be approved by this agency.

.46 The license issued to any scrap processor by the State Motor Vehicle Administration, under the applicable provisions of Article 66½, of the Annotated Code of Maryland, shall be displayed in a conspicuous place in the office of such scrap processor where such business is conducted. (See Figure 9.)

.47 Every licensed scrap processor shall use the assigned license number on all agency forms, in the area provided for such number, which relates to scrap processors.

.48 Upon receiving a vehicle, body or chassis from any licensed wrecker, the scrap processor shall obtain from such wrecker an assignment of ownership on copies number 2 and 3, of the Certificate of Disposal, (See Figure 3.), which has been properly executed by such assigning wrecker. Copy number 3 shall be retained by the scrap processor as a part of his files.

.49 When such vehicle has been completely destroyed by the licensed scrap processor, he shall certify on the reverse side of Copy Number Two of the Certificate of Disposal that such destruction has been accomplished and the

execution of such certification and submission to this Administration shall be the request for payment of the authorized bounty.

.50 The manufacturer's identification or serial number plate or the assigned Junked Vehicle Sticker and the properly executed Request for Payment shall be forwarded to the State Motor Vehicle Administration on the day such vehicle was so destroyed and such serial plate and executed Request for Payment shall serve as evidence of destruction and shall authorize the State Motor Vehicle Administration to effect payment of said bounty.

*.51 The authorized bounty shall be disbursed as follows:

A. Eight dollars ($8.00) to the assigning wrecker,

B. Eight dollars ($8.00) to the scrap processor destroying the vehicle, and

C. In the event that a scrap processor has acquired any vehicle, body or chassis from any person other than a licensed wrecker, the entire 16 dollars ($16.00) bounty shall be disbursed to the scrap processor. In this case the submission of a properly executed Certificate of Destruction of a Motor Vehicle, Form VR-124, and evidence of ownership shall serve as the request for payment of the authorized bounty. (See Figure 10.)

.52 No payment shall be made to any wrecker or scrap processor by the State Motor Vehicle Administration unless and until such Request for Payment which has been properly executed and the said serial plate has been forwarded to the State Motor Vehicle Administration.

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* This change due to amendment of the law dated April 26, 1973.

.53 The State Motor Vehicle Administration may establish procedures for the periodic payment of the bounty consistent with accepted procedures.

.54 Upon receiving a vehicle, body or chassis from any person, firm, corporation, or unit of government other than a wrecker, the scrap processor shall obtain from the seller or transferor, the Maryland Certificate of Title.

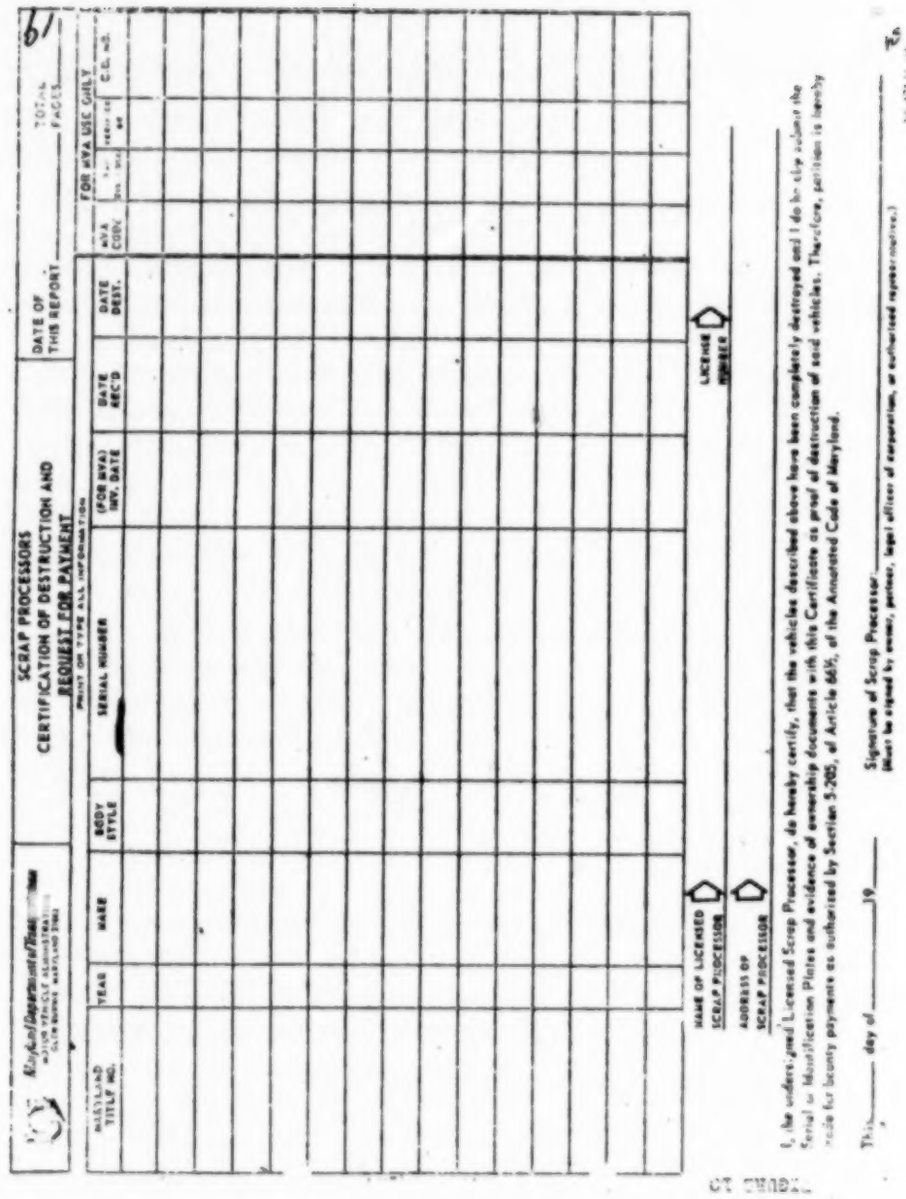
.55 For the purpose of administering the provisions of this regulation the term "Historic Motor Vehicle" shall have the same definition as set forth in Section 3-825 (1) of Article 66½ of the Annotated Code of Maryland and shall include but not be limited to vehicles enumerated in Section 11.02.02 paragraph .38 of Title II Department of Transportation, Maryland Agency Rules and Regulations.

.56 Whenever a licensed wrecker shall acquire possession of an "Historic Motor Vehicle", the assessment required under the provisions of Section 5-203 (d) of Article 66½ of the Annotated Code of Maryland may be waived at the discretion of the Motor Vehicle Administration in order to aid in the historical preservation of such vehicles and for use of the body, chassis, and parts thereof for restoration purposes.

.57 Classic Motor Vehicles — Every make of motor vehicle for which production has been discontinued and not resumed by the manufacturer.

.58 Whenever a licensed wrecker shall acquire possession of an antique or classic motor vehicle, as defined in paragraphs .56 and .57 of this chapter, the assessment required under the provisions of Section 5-203 (d), of Article 66½, of the Annotated Code of Maryland may be waived at the discretion of the Administrator of Motor Vehicles in order to aid in the historical preservation of such vehicles and for use of the body, chassis and parts thereof for restoration purposes.

FORM VR-124



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APPENDIX III

Md. Legislative Council Committee on Taxation and Fiscal Matters, 1967 Report.

DISPOSAL OF SOLID WASTES

These two items, Nos. 58 and 176, are concerned with the problems of solid wastes in Maryland. Senate Bill No. 434 (Item 58, introduced at the 1967 regular session, would require that the planning for water and sewerage facilities by local governments include facilities for the disposal of solid wastes. Senate Joint Resolution No. 57 (Item 176) requested the Committee on Taxation and Fiscal Matters to review the problems of abandoned and discarded motor vehicles and proposed legislation to effect a solution to these problems.

At its first hearing on the subject, the Committee heard testimony from steel scrap processors, auto and truck wreckers, and representatives of automobile dealers and manufacturers, of the Federal Bureau of Public Roads and of the State departments of Health, Motor Vehicles, and the Maryland State Police. Subsequently, the Committee also had a communication from a steel manufacturer.

From this testimony, and from the examination of certain written materials, including studies by Federal and State agencies, it became apparent that the core of the problem was to find ways to speed up the so-called "scrap cycle." In a report made to the General Assembly late in 1966, the State Department of Health said: "Restoring the scrap cycle seems to be the only logical means to rid the countryside of worn-out, rusting automobile hulks."

Although other disposal methods have been discussed from time to time, the most effective and most practicable means would seem to be to use the scrapping process, which combines profit for industry with conservation of natural resources. From the

evidence presented to the Committee, the objective would seem to be to accelerate the movement of the vehicle from the owner who has decided to discard it, to the auto wrecker who salvages parts and markets the hulk, to the scrap processor who reduces it to scrap marketable at the mills, and finally to the steel mills which convert it into new usable steel.

From the scrap processors, manufacturers and others, the Committee learned that the price of the hulks is affected adversely by the cost of the removal of contaminants, including non-ferrous metals, dirt, rust and other materials. This condition, it was disclosed, will be aggravated by the proposed ban on open burning of hulks at wreckers' yards.

It is indicated that the point at which the movement bogs down most frequently is at the automobile junkyard. The most profitable — and sometimes the only profitable — part of his operation is the sale of usable parts. The margin of his profit in the sale of the hulk to the scrap processor is so small that any obstruction tends to retard the movement. This difficulty is expressed in a communication from a wrecker, attached here as Exhibit A.

Technological advances in the manufacture of steel has reduced the market for the kind of scrap that comes from abandoned and discarded motor vehicles. This new steel-making process was described by several persons who testified before the Committee, and its effects upon the scrap market is discussed in a communication from an official of Bethlehem Steel Corporation, presented here as Exhibit B.

Technological improvements in the processing of scrap offer some prospect of a better quality of scrap and hence a better price for the product. The shredding process was described to the Committee. A report by the U.S. Department of Commerce (*Iron and Steel Scrap Consumption Problems,* Page 26) says this process, which removes contaminants without burning, "apparently will be the method used to process the bulk of these materials in the near future."

Titling of motor vehicles and other legal technicalities, the Committee learned, frequently tend to make a wrecker hesitate to handle the abandoned or discarded automobile. This problem is discussed in Exhibit A, and also in a communication from a representative of the Department of Motor Vehicles, attached as Exhibit C.

Early in the discussion of the subject matter, the Committee recognized it was dealing, in reality, with two problems: (1) the abandoned motor vehicle and (2) the motor vehicle junkyard. Abandonment is just one aspect of the overall problem of disposal. The accumulation of junk vehicles in unsightly salvage yards, in "automobile graveyards" and in other places is another aspect.

Owners often abandon their worn-out cars because it is less expensive and less time-consuming than driving them or towing them to a wrecker. The auto wreckers accumulate them in large quantities because: (1) it is an easy way to store inventories of profitable parts, and (2) there is little or no financial inducement to remove them to the scrap processor. Junk automobiles also tend to accumulate around garages and service stations, and in some cases around private homes, as a source of parts and for other reasons.

At the suggestion of the Chairman of the Committee, a member of the staff of the Fiscal Research Bureau met with officials of the Department of Motor Vehicles to consider legislation to deal effectively with the twin problems of motor vehicle abandonment and motor vehicle junkyards. At a subsequent Committee meeting, Mr. Ejner Johnson and Mr. Charles Pfaff, Department of Motor Vehicles officials, submitted a draft proposal, attached hereto as Exhibit D.

After considering this proposed legislation, along with House Bill 626, which was introduced at the last session and which is the Uniform Act on abandoned vehicles recommended by the Council of State Governments, the Committee was unable to reach a decision and the Chairman appointed a subcommittee to study the matter further and recommend a course of action.

BEST COPY AVAILABLE

The Subcommittee on Abandoned and Discarded Motor Vehicles met and heard further testimony from representatives of the Maryland Auto Wreckers Association, who stated that to place a heavy tax or assessment on their inventory of junk cars would tend to drive them out of business. They acknowledged, however, that cars should not be kept in yards for more than two years and indicated they could sustain a tax or assessment after the expiration of a two-year period.

Members of the Subcommittee assured the automobile wreckers that they acknowledged the importance of the business they were engaged in, not only as legitimate profit-making enterprises but also as a vital link in the disposal process.

After this hearing and a lengthy discussion, the Subcommittee recommended that the Committee approve that part of the Johnson-Pfaff draft having to do with junkyards, but that it reject the portion dealing with abandoned motor vehicles, substituting therefor the Uniform Act, attached to this report as Exhibit E.

CONCLUSIONS

The Committee on Taxation and Fiscal Matters feels that legislation is needed to cope with the problem of abandoned motor vehicles and also with automobile junkyards. It considers the uniform law proposed by the Council of State Governments to be the best legislation suggested to deal with this problem, but believes this act should be strengthened by placing a penalty on persons who unlawfully abandon vehicles on public or private property.

The Committee feels that the auto wrecker plays an important role in the disposal of abandoned and discarded motor vehicles and should be encouraged to handle as many of these vehicles as possible. But it feels also that he should be persuaded to move vehicles into the scrap cycle as soon as practicable after the salvaging of usable parts, and believes that some penalty should be imposed upon persons in the industry who through neglect or inertia fail to move vehicles to scrap processors within a reasonable length of time.

RECOMMENDATIONS

The Committee recommends therefore:

1. *That the Uniform Law on Abandoned Motor Vehicles (H.B. 626, 1967 session) be enacted, and that a section be added thereto providing a fine of $25 to $200 for anyone who abandons a motor vehicle on any public property or on any property other than his own without the permission of the owner or lessee of such property.**

2. *That Sections 71B, 71C, 71D, 71F, 71G and 71H of the Johnson-Pfaff draft be enacted, with the provision for a $5 assessment for each vehicle kept for more than one year and $5 for each six months thereafter, and that a new section be added to provide that: "It shall be unlawful for a scrap processor or wrecker to store vehicles for salvage or demolition at a density of more than 100 vehicles per acre." The Act would take effect January 1, 1969.***

EXHIBIT A

VARSITY AUTO REPAIR, INC.

July 11, 1967

George E. Snyder, Chairman
Committee on Taxation and
Fiscal Matters

Dear Senator Snyder:

The fundamental problem of junked cars bottlenecks right at the point of final disposition for demolition, and until that problem is solved, none of the other proposed measures is worth a dime. Right now the junk yards and towing companies are performing what constitutes a public service in handling these abandoned auto at great expense and little or no compensa-

* A bill has been prepared and will be included in the report of the Legislative Council to the 1968 General Assembly, if adopted.

** A bill has been prepared and will be included in the report of the Legislative Council to the 1968 General Assembly, if adopted.

tion, and the only practical legislation possible is to make this operation worthwhile economically which can be done. Any restrictive legislation aimed at the junk yards or towers will in all likelihood result in a suspension of the only disposition channels currently in operation for junk cars. The situation needs to be approached in the following order.

1. Create a plant for the ultimate demolition of the car bodies. This is a must, whether it be state operated or privately financed. Local laws against burning have eliminated the only previous economically workable arrangement for ordinary operators.

2. Create an artificial value for junk cars, whereby their owners, or the junk yard or towers, will find it profitable to get the car to the demolition plant. The idea of a fixed fee, applied annually to the license tags, is one method of fairly distributing the responsibility of final disposition amongst the various owners of the vehicle. This added fee would serve to pay the tower and the operator of the disposal plant, if privately operated.

3. Ease the difficulty of the towing company or other storer in getting the right to take the car to the disposal plant. The new Certification of Sale plan appears to be a great step forward, but to date none of the police departments have set up the machinery to grant the Certification of Salvage Value which is an integral part of the plan.

Ease the methods of obtaining the name of the owner of the vehicle to whom the registered letter must be sent. Currently this must be obtained by taking the serial number to DMV, but they will only give out three names per day. This is time consuming and costly. Why couldn't this be done by the telephone to storers with special permits?

Ease the problem of getting rid of wrecked cars, or even junk cars, which have outstanding liens. The above rules at DMV also apply to getting lien information, and that could be similarly done by telephone, but the big bottleneck here is to get action out of the lienholder. The right to notify the lienholder

with a ten day waiting period, should be sufficient to grant the storer a Certification of Sale and authority to dispose of the car.

Once these direct problems are solved, we can get on with legislation to regulate junk yards and other storers in the direction of faster turnover and beautification, but until the economic means and facilities for disposal of junk cars are established, it is hardly expedient to propose legislation which would encumber the present set up, even as poor as it is for all concerned. Either state operated machinery, or a profitable system for private industry must be effected, or else all other legislation will be only window dressing.

Very truly yours,

JOHN M. SASSER,
President.

EXHIBIT B

BETHLEHEM STEEL CORPORATION

October 2, 1967

The Honorable George E. Snyder, Chairman
Committee on Taxation and Fiscal Matters
State Office Building
301 West Preston Street
Baltimore, Maryland 21201

Dear Senator Snyder:

Referring to your letter of September 25th to W. F. Holin of this office, we discussed the matter of the appearance of a Bethlehem representative at your Committee meeting on Monday evening with Mr. Odell Smith of your staff.

As we explained to Mr. Smith, the basic problem you have under study is one that required the technical assistance of the scrap industry and is, in reality, a step removed from our operations. For this reason, we feel it would be inappropriate for us to appear before your Committee to provide expert testimony.

Mr. Smith then indicated to us there was only one question the Committee wanted answered by a steel representative, i.e.; Do the technological changes currently being made in the steel industry (that is, the shift from open hearth to basic oxygen furnace production) mean that less scrap is required in the future?

The answer to this question is "yes." The basic oxygen furnaces consume a higher proportion of molten pig iron (reduced from ore) and lesser of scrap than do the conventional open hearth furnaces. This trend will undoubtedly increase in future years as the older open hearths are phased out and are replaced by the more economical and more productive basic oxygen furnaces.

We sincerely regret we are unable to have a representative appear at your meeting on Monday night, but this letter should serve as the official Bethlehem Steel Corporation answer to the one question Mr. Smith says the Committee wants answered.

Very truly yours,

T. T. LANKFORD, Jr.,
Assistant to General Manager.

EXHIBIT C

DEPARTMENT OF MOTOR VEHICLES

July 13, 1967

Mr. Odell M. Smith
Fiscal Research Bureau
301 West Preston Street
Baltimore, Maryland 21201

Dear Odell:

The following is a summation of testimony that was offered by me and Mr. Charles Pfaff, Assistant Director, Vehicle Registration Division, Tuesday evening, July 11, 1967, before the Committee on Taxation and Fiscal Matters:

During the 1967 session of the Maryland General Assembly legislation was introduced by Senator George Snyder of Washington County, designed to rid the

countryside of unsightly automobile junk yards. Known as Senate Bill 257, the legislation would have required that junk dealers, six months from the date of delivering the titles for vehicles to be scrapped to the Department of Motor Vehicles, would notify the Department that the vehicles had in fact been scrapped, dismantled or destroyed. In the event that the vehicles were not disposed of within the time required, the junk yard owner would be required to pay an excise tax of $20.00. Because of various administrative problems, particularly the costs involved, that arose regarding this legislation the Bill was not reported out of the Senate Finance Committee. Instead, a resolution introduced by Senators Clark and Snyder was adopted directing the Committee on Taxation and Fiscal Matters to study the overall problem of disposition of junked automobiles.

The existing law that governs the disposition of junked automobiles can be found in sections 56 and 67 of Article 66½. Essentially, these provisions provide for wreckers or dismantlers (junk yard) to immediately deliver to the Department of Motor Vehicles the titles for vehicles to be purchased for scrap or to be dismantled. The law also requires that such wreckers maintain records open for inspection to Peace Officers. As you can see, existing law in no way provides for the effective removal of the vehicles even after all usable parts have been scavenged.

It should be noted also that at the 1967 session of the Maryland General Assembly, Senate Bill 22 prepared by the Legislative Council with this Department's assistance, did set up a relatively easy method for the disposition of abandoned motor vehicles on private or public property. Essentially, this new law permits the owners of property upon which such vehicles have been abandoned to notify the owners of such vehicles and also any lienholders as shown by records of the Department of Motor Vehicles that the vehicles have been abandoned on the property and that the owners of property intend to sell the vehicles if such vehicles are not claimed. This notice to registered owners and lienholders is sent after a 30-day waiting period and if

no reply is received within 10 days the property owners may proceed with disposition on forms printed by this Department of Motor Vehicles and available from the State Police. Thus, some positive steps have been taken to remove some of the difficulties that have arisen in this disposition of abandoned automobiles as a result of this State's titling laws. It seems that the problem to which the committee was addressing itself essentially involves the proliferation of automobile junk yards throughout the State and not essentially the disposition of abandoned automobiles, a problem which, as I have already indicated, has been to a large degree resolved by Senate Bill 22.

There are a number of approaches to this problem but unfortunately none of them that I have come across preclude the open burning necessary so that the hulk of the automobile can be properly prepared for the scrap processing.

In my conversation with representatives of the scrap metal institute I was advised that several states, including New York, Connecticut and Tennessee, have studied the problem of unsightly automobile junk yards. It is also my understanding that the State of Wisconsin has under active consideration at this time a law that is aimed at resolving the automobile junk yard problem. One method proposed, which is similar to the plan under consideration in Wisconsin and was suggested also to the committee by Mr. Sasser of Varsity Towing, calls for the imposition of a surtax on the titling fee charged by this Department. In other words, for every original and subsequent title issued for a motor vehicle by this Department the revenue received by this Department would be funneled into an escrow fund. Then, when the vehicle was eventually turned over to a junk yard operator, the operator would be encouraged to remove all parts that possibly could be sold immediately and haul the remaining carcass to a scrap processor. The scrap processor in turn would certify on forms prepared by this Department that the vehicle in question was in fact processed. This certificate would then be presented by the junk yard operator to the Department and a specified fee would be paid to the

junk yard operator for disposing of the junked automobile. This proposal in a sense creates an artificial value for the carcass of the junked automobile and would serve to encourage rapid disposition of the vehicle and preclude its laying around for 2 or 3 years in an automobile junk yard. Unfortunately, this proposed solution does not address itself to the problem of open burning and the attendant problem of air pollution.

In addition, some consideration should also be given to the fact that many of the cars that are titled and registered in Maryland and for which a fee would be paid, are junked in other states and therefore the imposition of the surtax may not necessarily be equitable in such instances.

A second proposal simply requires the fencing from public view of automobile junk yards. This solution does not address itself to the problem of open burning nor does it strike at the heart of the problem which is really the elimination of the carcass of junked automobiles from the countryside and the proliferation of junk yards.

A third proposal would require that automobile junk yards be licensed perhaps by the Department of Motor Vehicles in much the same fashion as the Department currently licenses automobile dealers. Under this proposal, junk yard operators would be required to maintain accurate books and records subject to inspection during normal business hours by auditors and investigators of this Department. Wreckers and dismantlers would be required to immediately submit to the Department the titles of vehicles that come into their possession. Accompanying each title would be one part of a 3-part form prepared by this Department. The title would be cancelled by this Department and the form would be placed in a suspense file. The proposal would require that junk yard operators, within a specified period of time, perhaps 90, perhaps 120 or perhaps 180 days, dispose of the vehicle in question through a scrap processor. At the time that the vehicle is actually processed by the scrap processor, the second part of the 3-part form previously mentioned would be

certified by the scrap processor that the vehicle has in fact been scrapped. This form would then be submitted to the Department by the junk yard operator to close out the suspense file on the vehicle in question. The third part of the form would be maintained by the owner of the junk yard. This plan has some obvious disadvantages, however.

(1) It would be costly in that it would require the hiring by this Department of a number of additional auditors and investigators for the purpose of licensing and regulating automobile junk yard operators.

(2) Since, at the present time, there appears to be little market for scrap metal, it could result in the refusal by many junk yard operators to accept automobile wrecks and abandoned cars, particularly those more than 7 years old. The net result could be perhaps an increase rather than a decrease in the problem so long as the carcass of the junked vehicle has little value as scrap.

(3) It would also impose additional costs on dealers since it would require them to dismantle vehicle parts and to establish some sort of inventory control. This, too, would raise the cost of doing business with the junk yard operator. It may encourage him to either leave the business or refuse to accept vehicles of a vintage that makes the parts relatively valueless.

(4) It does not resolve the problem of open burning.

Finally, let me say that in reviewing our studies of automobile junk yard control, the problems to be solved revolve to a large degree around the following:

(1) Open burning.

(2) The creation of an artificial value for the automobile carcass to encourage its rapid delivery to a scrap processor.

(3) The establishment of a time period during which the vehicle in question may be permitted to remain on the automobile junk yard property.

(4) Technological advances in the scrap metal industry that would eliminate the need for open burning through the development of furnaces that would destroy the contaminants in automobile carcasses without polluting the air.

Please be assured that Commissioner Jewell and the Staff of this Department stand ready to assist the committee in every way possible in resolving this problem.

With kindest personal regards, I am

Sincerely yours,

EJNER J. JOHNSON, *Exec. Asst.*

* * * * * *

APPENDIX IV

Md. Legislative Council Committee on Taxation and Fiscal Matters, 1968 Report.

DISPOSAL OF ABANDONED AND JUNKED MOTOR VEHICLES

This item, No. 1(b), is on the Committee's agenda again this year as a result of a veto by the Chief Executive of a bill which the Committee sponsored in the 1968 session to regulate the disposal of abandoned and discarded motor vehicles.

The Governor based his rejection of the bill primarily on the questionable constitutionality of Subsection (k)(5) of the bill (Senate Bill No. 16). The veto message accompanies this report as Exhibit A. The Governor also mentioned the hardship upon wreckers of the taxing provisions of the bill and asked the General

Assembly to re-examine the desirability of a "burial tax" — a tax upon vehicles to subsidize scrappers. The Committee, in its original study of the problem, examined the "burial tax" proposal thoroughly and rejected it.

The Attorney General questioned the constitutionality of Subsection (k)(5), stating that it "might be held to unduly restrict the lawful operation of a private business in violation of Article 23 of the Maryland Declaration of Rights." His opinion is attached hereto as Exhibit B. He also noted a defect in the title of the bill.

The Attorney General said however, that Subsection (k)(5) if unconstitutional would not invalidate the remainder of the bill, despite the fact that it contained no severability clause.

CONCLUSIONS

In its reconsideration of this matter, the Committee reaffirmed its position of last year, noting the urgent need of legislation to cope with the problem of abandoned motor vehicles and automobile junkyards. It believes that the legislation adopted by the General Assembly to a great extent would relieve this problem. It acknowledges, of course, that the bill should be revised to correct the deficiencies noted by the Attorney General. A suggested form for the revised legislation is attached, Exhibit C.

As it stated in its report of last year, the Committee is aware of the important role the auto wrecker plays in the disposal of abandoned and discarded vehicles and believes that his business activity should be encouraged. It believes that the wrecker should be persuaded to move vehicles into the scrap cycle as rapidly as possible, and thinks that to accelerate this cycle some penalty should be imposed upon those persons in the industry who through neglect or inertia fail to move vehicles to scrap processors within a reasonable length of time.

RECOMMENDATIONS

Therefore, the Committee recommends *that the General Assembly override the Governor's veto of Senate Bill No. 16, and that amendatory legislation* be enacted to correct the defects noted by the Attorney General.*

EXHIBIT A

Honorable William S. James
President of the Senate
State House
Annapolis, Maryland

Dear Mr. President:

In accordance with Section 17 of Article II of the Maryland Constitution, I have vetoed today Senate Bill 16 and am returning it to you.

This bill would provide for the regulation of wreckers and scrap processors and the licensing of wreckers among other provisions. I am well aware of the problem of solid waste disposal and certainly commend the Legislative Council's committee on taxation and fiscal matters for their interest and work toward a novel solution. However, the difficulties with certain provisions of this bill are of such magnitude that I must register my disapproval.

The Attorney General whose opinion is attached and is to be considered part of this veto message, has advised me that subsection (K) (5) may well be invalid. This provision, which would make it unlawful for a licensed wrecker to refuse to accept a junked auto, is the heart of the bill according to its proponents. Without it the bill loses much of its force in dealing with this problem.

I am sure also, that the legislature, had it known of the probable unconstitutionality of subsection (K) (5),

* A bill will be prepared in accordance with this recommendation and included in the report of the Legislative Council to the 1969 Session of the General Assembly.

would not have approved the bill which included it. Now that I have been made aware of the constitutional difficulty, I cannot overlook it and approve the bill on the basis that the other provisions could probably stand without the invalid provision.

I was also impressed by the testimony of the wreckers who appeared before me at a hearing on the bill. It seems clear that the taxing provisions of the measure could and would mean a serious economic hardship on those involved. I urge the legislature to consider this provision carefully and in so doing, examine again the desirability of a "Burial Tax" imposed at the time of sale and held in escrow for the point in time when an auto is ready to be scrapped. Such a fund would provide a means by which the State could furnish an incentive to those in the business to take scrapped vehicles at the end of their useful life. I am aware that this approach runs into some difficulty due to the mobility of our society, especially here in Maryland. It may be that the Federal Government should establish such a procedure thereby insuring the participation of all States.

For the above reasons I am compelled to veto this measure.

Sincerely,

(s) SPIRO T. AGNEW, Governor

EXHIBIT B

THE ATTORNEY GENERAL

1200 One Charles Center
Baltimore, Maryland 21201

April 19, 1968

Honorable Spiro T. Agnew
Governor of the State of Maryland
State House
Annapolis, Maryland 21404

Re: Senate Bill 16

Dear Governor Agnew:

You have requested us to review Senate Bill 16 and to advise you whether it is constitutional. Senate Bill 16, which repeals various sections of the Motor Vehicle Code and enacts a new Sec. 71 to that Code, would, among other things, define wreckers and scrap processors, provide for the disposal of abandoned motor vehicles and for the licensing of wreckers, and cover other related matters.

While the matter is not entirely free from doubt, we believe that, with the exception of subsection (k)(5), the Bill is constitutional. It is true that the Bill does make distinctions in the obligations imposed as between wreckers and scrap processors as defined therein. However, in light of the strong presumption of constitutionality which attends the passage of a bill, we are unable to say that these distinctions on their face constitute a denial of equal protection of the laws.

Subsection (k)(5) presents an additional problem. This subjection makes it unlawful for a wrecker to refuse to accept any vehicle or part thereof unless the wrecker has reason to believe the vehicle has been stolen. We believe that subsection (k)(5) might be held to unduly restrict the lawful operation of a private business in violation of Article 23 of the Maryland Declaration of Rights. This is especially true in light of the requirement in subsection (n) of the Bill that a wrecker store no more that 250 vehicles on any one acre of property.

While the Bill itself does bear a substantial relation to the public health, the provisions of subsection (k)(5) might well constitute an unreasonable exercise of the police powers. See *Dasch v. Jackson,* 170 Md. 251, 263-264 (1936).

If subsection (k)(5) is invalid, it would not, in our opinion, invalidate the remaining provisions of the Bill. Even though the Bill does not contain a severability clause, it seems clear that without subsection (k)(5), the original legislative intent in enacting the Bill would be preserved and we therefore, are of the opinion that the remainder of the Bill would not be effected in any event. *Baltimore v. A. S. Abell Co.,* 218 Md. 273 (1958).

It is also true that the title of the Bill refers to the licensing of scrap processors along with wreckers whereas the Bill actually does not provide for the licensing of scrap processors. However, we do not view this inaccurate limitation in the title as being misleading in the constitutional sense, but rather more surplusage. *Pressman v. State Tax Comm.,* 204 Md. 78 (1954).

We trust this information will be helpful to you.

Sincerely,

FRANCIS B. BURCH, *Attorney General.*

* * * * * *

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between Alexandria Scrap Corporation, Plaintiff, by Norman P. Ramsey, H. Thomas Howell, Carl E. Eastwick, and Semmes, Bowen & Semmes, its attorneys, and Harry R. Hughes, Ejner J. Johnson, Charles F. Pfaff, and Nance J. Stanboni, Defendants, by Francis B. Burch, J. Michael McWilliams, Judson P. Garrett, Jr., and N. Barton Benson, their attorneys, for the purpose of the trial of the above-entitled and numbered cause, that upon the trial of said action the following facts are admitted and agreed upon by the parties and shall be taken as true without any evidence being produced

thereon. However, other and additional proof as to any fact or matter not inconsistent with the statements contained in this stipulation may be introduced by either of the parties.

1. The Plaintiff is a corporation organized under the laws of Virginia.

2. The Defendants are various state officials charged with the administration of Section 11-1002.2(f)(5) of Article 66½ of the Maryland Annotated Code (1974 Supp.).

3. The Plaintiff has been a licensed scrap processor since the inception of the statute.

4. The Plaintiff's processing facilities are located in Alexandria, Virginia.

5. The Plaintiff has been engaged in interstate commerce in the business of processing iron, steel, and nonferrous scrap for sale for resmelting by steel mills throughout the United States.

6. Plaintiff's methods of operation have not been altered by the statutory license requirements, except to subject it to regulatory burdens and requirements which did not exist until Maryland adopted comprehensive legislation.

7. In 1970, when scrap processors came under the statute, Plaintiff applied for and was granted a scrap processor's license and has maintained it continuously, with periodic renewals until the present time. A copy of Plaintiff's current scrap processor's license, Form VR-89 is appended hereto as Exhibit A and incorporated by reference herein.

8. Plaintiff maintains an office in Maryland at 302 Ellsworth Drive in Silver Spring in compliance with administrative regulations contained in M.A.R.R. 11.02.05.45.

9. Of the 16 scrap processors which have been licensed by the Administration, seven of them, including the Plaintiff, are non-Maryland processors with no processing facilities physically located within Maryland; apart from Plaintiff, these are all located in

Pennsylvania; Pollock-Abrams, Inc.; Coatesville Scrap Iron & Metal Co., Inc.; Tube City Iron & Metal Co., Inc.; M. Glossor & Sons, Inc.; Goldstan Processing Corp.; and Raimco Recycling Metal Co. (corporate successor to Goldstan).

10. In order to participate in the scrap metal industry, a scrap metal processor must invest substantial sums in equipment. Maryland licensed scrap processors are required, as a matter of industrial necessity and now statutory command, to maintain a hydraulic baler and shears or a shredder, or other equipment capable of rendering the scrap acceptable to any smelting operation by the steel mills. This equipment often costs in excess of a million dollars and has to be installed permanently at great expense.

11. Scrap processors are also subject to even more violent ups and downs than the cyclical industries which buy the processed scrap. The market value of automobile hulks is heavily dependent upon the prices steel mills are willing to pay for the scrap, which in turn is influenced by national and international economic conditions over which Maryland has no control. The result is relatively fierce competition by scrap processors for the acquisition of the available automobile hulks.

12. The destruction of Maryland titled automobiles bestows economic advantages upon scrap processors, licensed wreckers, unlicensed wreckers, scrap yard operators, vehicle towers, and other members of the general public who elect to take part in the bounty program. Some of these individuals, although not eligible to claim the statutory wrecker's bounty by regulation (M.A.R.R. 11.02.05.51), customarily shared a portion of the scrap processor's bounty which the processor voluntarily remitted or credited at the time the vehicle hulk was delivered as incentive for future deliveries. Because of this division of the bounty, as a practical matter, scrap processors like Plaintiff have promoted the legislative purpose by further inducing unlicensed wreckers and towers, who were not regulated and not subject to assessment on the vehicles in their

possession to place those vehicles into the "scrap cycle."

13. As an original participant in the bounty program, Plaintiff ranks third among all 16 licensed scrap processors in terms of bounty payments received with approximately 13.7% share of the payments, having received $219,084.00 in bounty payments since the program's inception until September 30, 1974. *See* Tables I and VI, which are appended hereto and are incorporated by reference herein. Plaintiff and the other nine top processors have shared in 99.1% of all bounty payments to scrap processors through September 30, 1974. *See* Table VI.

14. As a matter of practice, scrap processors have required persons delivering vehicles, unaccompanied by title certificates, or other documentation to execute a form of indemnity agreement by which the transferror (1) certified that he had legal ownership of and authority to deliver the vehicle, (2) agreed to indemnify the scrap processor from all liability for claims arising from destruction of the vehicle, and (3) warranted compliance with all Maryland laws and regulations.

15. As of July 1, 1974, Plaintiff and all other licensed scrap processors whose plants are not physically located and operating in Maryland can secure payment of the Section 5-205 bounty for the destruction of eight year old or older inoperable vehicles only by producing a Certificate of Title, a Certificate of Disposal (Form VR-28), a police Certificate of Authority (Form VR-20), or an Auctioneer's Bill of Sale (Form VR-46).

16. The police Certificate of Authority (VR-20) method of transferring title of an eight year old or older, totally inoperable vehicle to a scrap processor was seldom used and never really considered as an alternative to the indemnity agreement prior to July 1, 1974, when the provisions of Section 11-1002.2 (f)(5) were uniformly available to customers of *all* scrap processors, irrespective of location.

17. Tables I through VI attached hereto and made a part hereof are an accurate summary of the Motor

Vehicle Administration's records of bounty amounts authorized to be paid by the Maryland Comptroller's Office to scrap processors licensed by the State of Maryland for the period from July 1, 1970 to September 30, 1974.

18. The attached copy of the current scrap processing license certificate issued to Alexandria Scrap Corporation by Maryland is true and correct.

19. The attached copies of indemnity agreements submitted to various Maryland-Licensed scrap processors are true and correct.

Dated this 16th day of January, 1975.

FRANCIS B. BURCH,
J. MICHAEL MCWILLIAMS,
JUDSON P. GARRETT, JR.,
N. BARTON BENSON,

Attorneys for the Defendants

NORMAN P. RAMSEY,
H. THOMAS HOWELL,
CARL E. EASTWICK,
SEMMES, BOWEN & SEMMES,

Attorneys for the Plaintiff.

TABLE I:

Percentage of Monthly Bounty Payments Paid to Alexandria Scrap Corporation July 1, 1970 — Sept. 30, 1974

Month	Paid to Alexander Scrap Corp.	Total Monthly Payment Approved	% Paid to Alexandria Scrap
1970			
July	$ 1,040.00	$ 10,840.00	9.59
August	3,210.00	20,960.00	15.31
September	1,250.00	13,780.00	9.07
October	2,470.00	25,660.00	9.62
November	1,330.00	12,960.00	10.26
December	1,870.00	23,510.00	7.95
1971			
January	1,650.00	14,040.00	11.75
February	605.00	6,465.00	9.35
March	1,495.00	13,145.00	11.37
April	2,105.00	15,735.00	13.37
May	1,430.00	16,615.00	8.60
June	1,350.00	31,060.00	4.34
July	1,335.00	13,640.00	9.78
August	1,345.00	15,355.00	8.75
September	540.00	16,875.00	3.20
October	1,565.00	11,695.00	13.38
November	2,695.00	12,960.00	20.79
December	1,420.00	13,315.00	10.66
1972			
January	755.00	10,065.00	7.50
February	545.00	8,515.00	6.40
March	1,565.00	13,095.00	11.95
April	890.00	13,655.00	6.51
May	2,110.00	14,785.00	14.27
June	1,090.00	13,215.00	8.24
July	1,140.00	14,994.00	7.60
August	2,916.00	22,170.00	13.15
September	300.00	11,088.00	2.70
October	1,458.00	22,692.00	6.42
November	804.00	9,501.00	8.46
December	2,598.00	16,152.00	16.08

Month	Paid to Alexander Scrap Corp.	Total Monthly Payment Approved	% Paid to Alexandria Scrap
1973			
January	1,320.00	26,016.00	5.07
February	1,872.00	27,492.00	6.84
March	1,758.00	27,246.00	6.45
April	3,054.00	22,452.00	13.60
May	5,376.00	39,990.00	13.44
June	3,112.00	40,880.00	7.61
July	11,956.00	91,832.00	13.01
August	10,720.00	56,448.00	18.99
September	3,248.00	44,582.00	7.28
October	7,956.00	56,962.00	13.96
November	7,224.00	46,176.00	15.64
December	3,736.00	40,882.00	9.13
1974			
January	$21,534.00	$93,296.00	23.08
February	8,144.00	54,956.00	14.81
March	14,776.00	73,552.00	20.08
April	7,118.00	54,126.00	13.15
May	6,384.00	74,520.00	8.56
June	11,176.00	55,821.00	20.02
July	11,776.00	87,872.00	13.40
August	21,016.00	63,392.00	33.15
September	10,952.00	58,592.00	18.69
TOTALS: (1970-74)	$219,084.00	$1,595,622.00	13.73

The source of this data consists of monthly reports of scrap processors' accounts payable, as prepared by Thomas E. Harris, Chief, Auto Wreckers Section, Motor Vehicle Administration of the State of Maryland.

TABLE II:

PERCENTAGE OF MONTHLY BOUNTY PAYMENTS
PAID TO UNITED IRON & METAL CO.
JULY 1, 1970 — SEPT. 30, 1974

Month	*Paid to United Iron & Metal Co.*	*Total Monthly Payments Approved*	*% Paid to United Iron & Metal Co.*
1970			
July	$ 2,410.00	$ 10,840.00	22.23
August	5,890.00	20,960.00	28.10
September	6,740.00	13,780.00	48.91
October	9,100.00	25,660.00	35.46
November	3,310.00	12,960.00	25.54
December	9,560.00	23,510.00	40.66
1971			
January	4,015.00	14,040.00	28.59
February	1,115.00	6,465.00	17.24
March	2,250.00	13,145.00	17.11
April	3,980.00	15,735.00	25.29
May	4,330.00	16,615.00	26.06
June	6,855.00	31,060.00	22.07
July	5,075.00	13,640.00	37.20
August	2,505.00	15,355.00	16.31
September	5,810.00	16,875.00	34.42
October	3,125.00	11,695.00	26.72
November	2,185.00	12,960.00	16.85
December	4,855.00	13,315.00	36.46
1972			
January	2,980.00	10,065.00	23.60
February	2,960.00	8,515.00	34.76
March	3,815.00	13,095.00	29.13
April	6,850.00	13,655.00	50.16
May	6,625.00	14,785.00	44.80
June	4,975.00	13,215.00	37.64
July	7,866.00	14,994.00	52.46
August	7,620.00	22,170.00	34.37
September	4,398.00	11,088.00	39.66
October	11,081.00	22,692.00	48.83
November	4,410.00	9,501.00	46.41
December	5,838.00	16,152.00	36.14

Month	*Paid to United Iron & Metal Co.*	*Total Monthly Payments Approved*	*% Paid to United Iron & Metal Co.*
1973			
January	15,828.00	26,016.00	60.83
February	15,918.00	27,492.00	57.93
March	15,276.00	27,246.00	56.06
April	12,906.00	22,452.00	57.48
May	15,804.00	39,990.00	39.51
June	17,084.00	40,880.00	41.79
July	35,426.00	91,832.00	38.57
August	19,872.00	56,448.00	35.20
September	21,998.00	44,982.00	49.04
October	22,540.00	56,962.00	39.57
November	25,632.00	46,176.00	55.50
December	13,530.00	40,882.00	33.09
1974			
January	37,984.00	93,296.00	40.71
February	20,308.00	54,956.00	36.95
March	38,216.00	73,552.00	51.95
April	14,586.00	54,126.00	26.94
May	25,568.00	74,520.00	34.31
June	22,293.00	55,821.00	39.93
July	37,688.00	87,872.00	42.88
August	15,288.00	63,392.00	24.11
September	22,016.00	58,592.00	37.57
TOTALS: (1970-74)	$618,289.00	$1,595,622.00	38.75

The source of this data consists of monthly reports of scrap processors' accounts payable, as prepared by Thomas E. Harris, Chief, Auto Wreckers Section, Motor Vehicle Administration of the State of Maryland.

TABLE III:

Distribution of Monthly Bounty Payments Between Maryland & Non-Maryland Scrap Processors — July 1, 1970 — June 30, 1974

Month	Total Paid to Md. Processors	Total Paid to Non-Md. Processors	Total Monthly Payment Approved	% Paid to Maryland Processors	% Paid to Non-Md. Processors
1970					
July	$ 5,380.00	$ 5,460.00	$ 10,840.00	49.63	50.36
August	9,410.00	11,550.00	20,960.00	44.89	55.10
September	11,340.00	2,440.00	13,780.00	82.29	17.70
October	10,650.00	15,010.00	25,660.00	41.50	58.49
November	5,800.00	7,160.00	12,960.00	44.75	55.24
December	15,880.00	7,630.00	23,510.00	67.54	32.45
1971					
January	10,580.00	3,460.00	14,040.00	75.35	24.64
February	4,190.00	2,275.00	6,465.00	64.81	35.18
March	10,140.00	3,005.00	13,145.00	77.13	22.86
April	10,610.00	5,125.00	15,735.00	67.42	32.57
May	12,680.00	3,935.00	16,615.00	76.31	23.68
June	15,575.00	15,485.00	31,060.00	50.14	49.85
July	11,235.00	2,405.00	13,640.00	82.36	17.63
August	11,485.00	3,870.00	15,355.00	74.79	25.20
September	14,005.00	2,870.00	16,875.00	82.99	17.00
October	9,015.00	2,680.00	11,695.00	77.08	22.91
November	7,905.00	5,055.00	12,960.00	60.99	39.00
December	9,805.00	3,510.00	13,315.00	73.63	26.36
1972					
January	7,095.00	2,970.00	10,065.00	70.49	29.50
February	7,610.00	905.00	8,515.00	89.37	10.62
March	10,550.00	2,545.00	13,095.00	80.56	19.43
April	11,980.00	1,675.00	13,655.00	87.73	12.26
May	10,725.00	4,060.00	14,785.00	72.53	27.46
June	9,060.00	4,155.00	13,215.00	68.55	31.44
July	12,468.00	2,526.00	14,994.00	83.15	16.84
August	18,540.00	3,630.00	22,170.00	83.62	16.37
September	10,482.00	606.00	11,088.00	94.53	5.46
October	19,493.00	3,199.00	22,692.00	85.90	14.09
November	7,551.00	1,950.00	9,501.00	79.47	20.52
December	12,732.00	3,420.00	16,152.00	78.82	21.17

Month	Total Paid to Md. Processors	Total Paid to Non-Md. Processors	Total Monthly Payment Approved	% Paid to Maryland Processors	% Paid to Non-Md. Processors
1973					
January	24,180.00	1,836.00	26,016.00	92.94	7.05
February	21,534.00	5,908.00	27,492.00	78.32	21.67
March	24,540.00	2,706.00	27,246.00	90.06	9.93
April	18,342.00	4,110.00	22,452.00	81.69	18.30
May	28,576.00	11,414.00	39,990.00	71.45	28.54
June	31,500.00	9,380.00	40,880.00	77.05	22.94
July	76,508.00	15,324.00	91,832.00	83.31	16.68
August	40,656.00	15,792.00	56,448.00	72.02	27.97
September	38,246.00	6,336.00	44,582.00	85.78	14.21
October	43,820.00	13,142.00	56,962.00	76.92	23.07
November	38,216.00	7,960.00	46,176.00	82.76	17.23
December	32,946.00	7,936.00	40,882.00	80.58	19.41
1974					
January	69,848.00	23,448.00	93,296.00	74.86	25.13
February	43,596.00	11,360.00	54,956.00	79.32	20.67
March	56,376.00	17,176.00	73,552.00	76.64	23.35
April	43,234.00	10,892.00	54,126.00	79.87	20.12
May	60,128.00	14,392.00	74,520.00	80.68	19.31
June	43,109.00	12,712.00	55,821.00	77.22	22.77
TOTALS: (1970-74)	$1,059,326.00	$326,390.00	$1,385,716.00	76.44	23.55

The source of this data consists of monthly reports of scrap processors' accounts payable, as prepared by Thomas E. Harris, Chief, Auto Wreckers Section, Motor Vehicle Administration of the State of Maryland.

TABLE IV:

Percentage of Monthly Bounty Payments Paid to Non-Maryland Processors Which Was Paid to Alexandria Scrap Corp July 1, 1970 — June 30, 1974

Month	Paid to Alexandria Scrap Corp.	Total Paid to Non-Maryland Processors	% Paid to Alexandria Scrap Corp.
1970			
July	$ 1,040.00	$ 5,460.00	19.04
August	3,210.00	11,550.00	27.79
September	1,250.00	2,440.00	51.22
October	2,470.00	15,010.00	16.45
November	1,330.00	7,160.00	18.57
December	1,870.00	7,630.00	24.50
1971			
January	1,650.00	3,460.00	47.68
February	605.00	2,275.00	26.59
March	1,495.00	3,005.00	49.75
April	2,105.00	5,125.00	41.07
May	1,430.00	3,935.00	36.34
June	1,350.00	15,485.00	8.71
July	1,335.00	2,405.00	35.50
August	1,345.00	3,870.00	34.75
September	540.00	2,870.00	18.81
October	1,565.00	2,680.00	58.39
November	2,695.00	5,055.00	53.31
December	1,420.00	3,510.00	40.45
1972			
January	755.00	2,970.00	25.43
February	545.00	905.00	60.22
March	1,565.00	2,545.00	61.49
April	890.00	1,675.00	53.13
May	2,110.00	4,060.00	51.97
June	1,090.00	4,155.00	26.23
July	1,140.00	2,526.00	45.13
August	2,916.00	3,630.00	80.33
September	300.00	606.00	49.50
October	1,458.00	3,199.00	45.57
November	804.00	1,950.00	41.23
December	2,598.00	3,420.00	75.96

Month	Paid to Alexandria Scrap Corp.	Total Paid to Non-Maryland Processors	% Paid to Alexandria Scrap Corp.
1973			
January	1,320.00	1,836.00	71.89
February	1,872.00	5,908.00	31.68
March	1,758.00	2,706.00	64.96
April	3,054.00	4,110.00	74.30
May	5,376.00	11,414.00	47.10
June	3,112.00	9,380.00	33.17
July	11,956.00	15,324.00	78.02
August	10,720.00	15,792.00	67.88
September	3,248.00	6,336.00	51.26
October	7,956.00	13,142.00	60.53
November	7,224.00	7,960.00	90.75
December	3,736.00	7,936.00	47.07
1974			
January	21,534.00	23,448.00	91.83
February	8,144.00	11,360.00	71.69
March	14,776.00	17,176.00	86.02
April	7,118.00	10,892.00	65.35
May	6,384.00	14,392.00	44.35
June	11,176.00	12,712.00	87.91
FY 1970-71	19,805.00	82,535.00	23.99
FY 1971-72	15,855.00	36,700.00	43.20
FY 1972-73	25,708.00	50,685.00	50.72
FY 1973-74	113,972.00	156,470.00	72.83
TOTALS: (1970-74)	$175,340.00	$326,390.00	53.71

The source of this data consists of monthly reports of scrap processors' accounts payable, as prepared by Thomas E. Harris, Chief, Auto Wreckers Section, Motor Vehicle Administration of the State of Maryland.

TABLE V:

Percentage of Monthly Bounty Payments Paid to Maryland Processors Which Was Paid to United Iron & Metal Co. July 1, 1970 — June 30, 1974

Month	*Paid to United Iron & Metal Co.*	*Total Paid to Maryland Processors*	*% Paid to United Iron & Metal Co.*
1970			
July	$ 2,410.00	$ 5,380.00	44.79
August	5,890.00	9,410.00	62.59
September	6,740.00	11,340.00	59.43
October	9,100.00	10,650.00	85.44
November	3,310.00	5,800.00	57.06
December	9,560.00	15,880.00	60.20
1971			
January	4,015.00	10,580.00	37.94
February	1,115.00	4,190.00	26.61
March	2,250.00	10,140.00	22.18
April	3,980.00	10,610.00	37.51
May	4,330.00	12,680.00	34.14
June	6,855.00	15,575.00	44.01
July	5,075.00	11,235.00	45.17
August	2,505.00	11,485.00	21.81
September	5,810.00	14,005.00	41.48
October	3,125.00	9,015.00	34.66
November	2,185.00	7,905.00	27.64
December	4,855.00	9,805.00	49.51
1972			
January	2,980.00	7,095.00	42.00
February	2,960.00	7,610.00	38.89
March	3,815.00	10,550.00	36.16
April	6,850.00	11,980.00	57.17
May	6,625.00	10,725.00	61.77
June	4,975.00	9,060.00	54.91
July	7,866.00	12,468.00	63.08
August	7,620.00	18,540.00	41.10
September	4,395.00	10,482.00	41.95
October	11,081.00	19,493.00	56.84
November	4,410.00	7,551.00	58.40
December	5,838.00	12,732.00	45.82

Month	*Paid to United Iron & Metal Co.*	*Total Paid to Maryland Processors*	*% Paid to United Iron & Metal Co.*
1973			
January	15,828.00	24,180.00	65.45
February	15,918.00	21,534.00	73.92
March	15,276.00	24,540.00	62.24
April	12,906.00	18,342.00	70.36
May	15,804.00	28,576.00	55.30
June	17,084.00	31,500.00	54.33
July	35,426.00	76,508.00	46.30
August	19,872.00	40,656.00	48.87
September	21,998.00	38,246.00	57.51
October	22,540.00	43,820.00	51.43
November	25,632.00	38,216.00	67.07
December	13,530.00	32,946.00	41.06
1974			
January	37,984.00	69,848.00	54.38
February	20,308.00	43,596.00	46.58
March	38,216.00	56,376.00	67.78
April	14,586.00	43,234.00	33.73
May	25,568.00	60,128.00	42.52
June	22,293.00	43,109.00	51.71
FY 1970-71	59,555.00	122,235.00	48.72
FY 1971-72	51,760.00	120,470.00	42.96
FY 1972-73	134,026.00	229,938.00	58.28
FY 1973-74	297,953.00	586,683.00	50.78
TOTALS: (1970-74)	$543,294.00	$1,059,326.00	51.28

The source of this data consists of monthly reports of scrap processors' accounts payable, as prepared by Thomas E. Harris, Chief, Auto Wreckers Section, Motor Vehicle Administration of the State of Maryland.

TABLE VI:

RANK OF LICENSED SCRAP PROCESSORS
ACCORDING TO TOTAL BOUNTY PAYMENTS
RECEIVED FOR THE PERIOD FROM
JULY 1, 1970 — SEPTEMBER 30, 1974

Rank	*Name*	*Location*	*Total Bounty Payments Received*	*% Share of Market*
1.	United Iron & Metal Inc.	Md.	$ 618,289.00	38.8
2.	Brooklyn Salvage & Waste Co.	Md.	282,298.00	17.7
3.	Alexandria Scrap Corp.	Va.	219,084.00	13.7
4.	Pollack-Abrams, Inc.	Pa.	128,983.00	8.1
5.	Maryland Metals, Inc.	Md.	118,211.00	7.4
6.	H. D. Metal Co., Inc.	Md.	61,335.00	3.8
7.	Shpak Auto Parts, Inc.	Md.	57,277.00	3.6
8.	Jos. Smith & Sons, Inc.	Md.	55,762.00	3.5
9.	Coatesville Scrap Iron & Metal Co., Inc.	Pa.	32,352.00	2.0
10.	United Auto Wrecking, Inc.	Md.	7,260.00	.5
11.	Brock's Scrap & Salvage Co.	Md.	4,594.00	.3
12.	Tube City Iron & Metal Co.	Pa.	3,597.00	.2
13.	Raimo Recycling Metal Co.*	Pa.	2,253.00	.1
14.	Montgomery Iron & Metal Co., Inc.	Md.	1,928.00	.1
15.	M. Glosser & Sons, Inc.	Pa.	1,339.00	.1
16.	Cambridge Iron & Metal Co.	Md.	1,060.00	.1
		TOTAL:	$1,595,622.00	

* Raimo is the corporate successor of Goldstan.

The source of this data consists of monthly reports of scrap processors' accounts payable, as prepared by Thomas E. Harris, Chief, Auto Wreckers Section, Motor Vehicle Administration of the State of Maryland.

Maryland Department of Transportation
MOTOR VEHICLE ADMINISTRATION
GLEN BURNIE, MARYLAND 21061

PROCESSOR'S No.

DIVISION OF CONSUMER SERVICES S 000900

THIS LICENSE
EXPIRES
December 31, 1974

SCRAP PROCESSOR LICENSE

THIS IS TO CERTIFY THAT

SCRAP PROCESSOR 10.0 s000900
ALEXANDRIA SCRAP CORPORATION
2324 MILL ROAD P.O. BOX 902
ALEXANDRIA, VIRGINIA 22313

is hereby licensed as a "SCRAP PROCESSOR," in accordance with the provisions of Section 5-202 of Article 66½, Annotated Code of Maryland, for the purpose of processing iron, steel, and non-ferrous scrap metal and whose principal product is scrap iron, steel and non-ferrous scrap for sale for resmelting only.

THIS LICENSE
MUST BE
DISPLAYED IN VIEW OF
THE PUBLIC

EJNER J. JOHNSON,
Administrator.

VR-89 (10-73)

AFFIDAVIT OF ISADORE GITTLESON

Commonwealth of Virginia
City of Alexandria, To wit:

I hereby certify that on this day of January in the year 1975, before me, a Notary Public, personally appeared Isadore Gittleson who made oath in due form of law that the facts hereinafter stated in the numbered paragraphs below are true to the best of his knowledge, information and belief and that the numbered paragraphs below would constitute the substance of his testimony concerning those same facts, if he were called to testify at a trial of this cause.

1. He is the General Manager and Assistant Treasurer of the Alexandria Scrap Corporation (hereinafter referred to as the Plaintiff). He has personal knowledge of all aspects of the business operations of the Plaintiff and of the nature of the scrap processing industry in which Plaintiff is a participant, and he is competent to render testimony concerning those operations and that industry. In addition to himself, he states that Stanley J. Asrael, the President of the Plaintiff, has knowledge of these same facts and is also competent to testify thereon. Eva Potter, the Office Manager of the Plaintiff, has detailed knowledge concerning the compilation of the data contained in the various tables set out below.

2. Plaintiff is in the business of processing ferrous and non-ferrous scrap metal which is sold, either directly or through brokers, to primary metal mills which consume the processed scrap and convert it into primary industrial metals such as steel, iron, aluminum, brass and copper. Many of these primary metal mills are located in states other than Virginia, the site of Plaintiff's operations.

3. The scrap metal sold by Plaintiff is in the form of either shredded scrap metal or bales. In order to produce those forms of scrap, which are the only forms which are marketable to the primary metal mills, the Plaintiff first purchases raw scrap metal in the form of automotive hulks, scrap metal remnants of metal fabricating processes, and many other forms. This raw scrap is then quickly converted into processed scrap ready for sale by either compressing the raw scrap into bales in a hydraulic press or shredding the raw scrap into small chunks of metal by passing it through a shredding machine of substantial proportions.

4. The lifeblood of the scrap metal processing industry is old cars, which account for approximately two-fifths of the ferrous scrap which is eventually sold to steel mills and other consumers as "obsolete scrap". "Obsolete scrap" is composed primarily of processed automobile hulks and differs from "home scrap" and "prompt industrial scrap". Those latter two forms of scrap are composed of metal trimmings and remnants

from various manufacturing processes. The majority of the scrap processed by the Plaintiff is "obsolete scrap".

5. The primary source of Plaintiff's raw materials is trade in automobile hulks. A very substantial portion of the Plaintiff's trade in old cars is derived from Maryland, as indicated by the following table:

Month	*Total Auto Hulks Processed in 1974*	*Auto Hulks from Maryland Sources Processed in 1974 (%)*
January	4958	2528 (51%)
February	4471	2290 (51%)
March	6503	2541 (39%)
April	6509	3422 (53%)
May	5826	2335 (40%)
June	4381	1827 (42%)
July	3264	917 (28%)
August	6544	2747 (55%)
September	4994	1240 (25%)
October	5951	1755 (29%)
November	5951	1810 (30%)
December	3171	1597 (50%)

The preceding table represents the number of cars which were towed from places located within the geographic limits of Maryland to Plaintiff's scrap yard in Virginia. This count was derived from a tabulation of the documents of transfer which accompanied those cars delivered in 1974. All cars accompanied by Maryland Title Certificates were deemed to have come from Maryland. All cars accompanied by an Auctioneer's Bill of Sale (VR-46), Certificate of Disposal (VR-28) and police Certificate of Authority to Dispose of a Vehicle (VR-20) were also deemed to have come from within Maryland.

A somewhat different procedure was involved in accounting for motor vehicles submitted under an indemnity agreement. Those indemnity agreements submitted for a bounty payment to the Maryland Motor Vehicle Administration, and accounted for on the data processing printout received monthly from that Administration, were all deemed to have been submitted for

vehicles coming from Maryland, since no such agreement is submitted to the Motor Vehicle Administration unless the tower executing it is known to customarily haul from Maryland.

Not all of the vehicles submitted to Plaintiff under an indemnity agreement were submitted for the payment of a bounty, however, and those indemnity agreements remained on file in the Plaintiff's office and were separated by the month in which they were submitted. This monthly accumulation of indemnity agreements was further segregated by the towers' names and addresses. The towers were classified by the area from which they were known to haul, *i.e.,* Maryland, Virginia, District of Columbia, or on a regional basis encompassing two or more of those jurisdictions. All indemnity agreements submitted by Maryland towers were included in the count of vehicles derived from Maryland, and those submitted by Virginia and District of Columbia towers were excluded. In the case of a tower known to haul from two or more jurisdictions, only those indemnity agreements submitted by him which specified that the car came from Maryland were included in the count of Maryland cars. In cases where the tower was unknown to the Plaintiff, and where no point of origin was specified on the indemnity agreement, the agreement was not included in the count of cars derived from Maryland.

The figures in the column representing the number of cars coming from Maryland are the sums of the VR-46, VR-28, VR-20, Title Certificate forms on file and of the count of indemnity agreements compiled as described above.

6. Plaintiff has not sought to qualify to engage in business in Maryland. Instead, Plaintiff relies on auto wreckers and towers doing business in that State as its exclusive source of old cars from within Maryland. Plaintiff does not acquire automobile hulks in Maryland, but depends solely on interstate commerce for the acquisition of those abandoned and inoperable vehicles coming from Maryland. These vehicles are transported from Maryland by wreckers, towers and other vehicle

haulers across the Potomac River to Alexandria, Virginia, where they are purchased by the Plaintiff, if accompanied by adequate title documentation, for processing into scrap which is eventually sold to mills for further processing into primary metal.

7. Maryland automobile towers, as contrasted with automobile wreckers who are licensed and regulated by the State of Maryland, constitute an important source of supply of automobile hulks to the Plaintiff as illustrated by the following table:

VOLUME OF MARYLAND VEHICLES ACQUIRED IN CALENDAR YEAR 1974 FROM UNLICENSED TOWERS AND FROM LICENSED WRECKERS.

Month	*Total 8-Year Old Inoperable Vehicles Delivered*	*Delivered by Licensed Wreckers*	*Delivered by Unlicensed Towers*
January	2488	360	2128
February	2233	414	1819
March	2454	186	2268
April	3007	508	2499
May	2302	188	2114
June	1769	278	1491
July	853	276	577
August	2632	1489	1143
September	1211	579	632
October	1740	352	1388
November	1713	517	1196
December	1574	948	625

The figures set out in the foregoing table were derived by counting all vehicles submitted under Certificates of Disposal (VR-28) as having come from licensed wreckers exclusively. All other vehicles coming from Maryland and accompanied by other title documentation were deemed to have been delivered by towers since, to Plaintiff's information and belief, licensed wreckers rarely use documents of title other than the VR-28 forms. The VR-28 method of transferring title is not available to unlicensed towers.

8. The ability to acquire eight year old or older totally inoperable motor vehicles from Maryland — those vehicles for which a $16.00 bounty is payable merely upon the submission of an executed indemnity agreement accompanied by sufficient proof of destruction — is of crucial importance to the conduct of the Plaintiff's business. Competition among Maryland-licensed scrap processors for those vehicles is intense. That class of vehicles eligible for the bounty payable by that expeditious procedure accounts for 96%, on the average, of all vehicles acquired by the Plaintiff from sources within Maryland, as illustrated by the following table:

AMOUNT OF ALEXANDRIA'S MARYLAND COMMERCE IN AUTO HULKS CONSISTING OF EIGHT YEAR OLD OR OLDER TOTALLY INOPERABLE MOTOR VEHICLES FOR CALENDAR YEAR, 1974.

Month	*Auto Hulks Processed from Maryland*	*8-Year Old Totally Inoperable Motor Vehicles from Maryland (% of Maryland Auto Hulks)*
January	2528	2488 (98%)
February	2290	2233 (98%)
March	2541	2454 (97%)
April	3422	3007 (88%)
May	2335	2302 (99%)
June	1827	1769 (97%)
July	917	853 (93%)
August	2747	2632 (96%)
September	1240	1211 (98%)
October	1755	1740 (99%)
November	1810	1713 (94%)
December	1597	1574 (98%)

The count of the eight year old or older totally inoperable vehicles listed in the foregoing two tables was derived from a count of the indemnity agreements submitted by Maryland towers. An indemnity agreement is a sufficient document of title only for vehicles which are eight years old or older and totally inoperable.

9. The bounty payable by Maryland for the destruction of vehicles formerly titled in Maryland has had a profound effect on those scrap processors who depend, in whole or in part, on the steady flow of old cars from Maryland sources. Shortly after the institution of the bounty program by the Maryland legislature, those scrap processors who rely on the flow of automobile hulks from Maryland sources obtained the Maryland license in order to participate in the bounty program. This ready acceptance of regulation by the State of Maryland was not surprising since a licensed scrap processor relying on the payment of the bounty for the destruction of Maryland-titled automobiles was in a position to pay higher prices for scrapworthy vehicles from Maryland then those which could be offered by an unlicensed competitor.

10. In practice and before the amendment to the statute, the Plaintiff rebated $14.00 of the $16.00 bounty to the towers who transferred the eligible vehicle by means of an indemnity agreement. The $14.00 rebates was credited to the tower, but was paid by check only upon the actual receipt of the bounty payment from the State of Maryland. Other scrap processors paid an immediate cash rebate for such vehicles and assumed the risk that the bounty application would be accepted by the State.

11. Only a limited number of the unlicensed towers doing business with the Plaintiff requested the rebate. For reasons known only to themselves, certain towers neglected to participate in the bounty programs. Unlike licensed wreckers, these towers do not have a statutory right to a part of the bounty. Over the years, the Plaintiff developed a number of regular suppliers of bounty-eligible vehicles who regularly requested, and

received the bounty rebate. Those customers were steady sources of vehicles from Maryland. Their indemnity agreements, along with adequate proof of the destruction of the vehicle, were routinely accepted by the Maryland Motor Vehicle Administration for bounty payment.

12. The amendment to §11-2002.2(f)(5), effective on July 1, 1974, has drastically altered the market in eight year old or older motor vehicles formerly titled in Maryland. That amendment has made it impossible for the Plaintiff to offer the customary rebate of the bounty payable for those cars, while at the same time preserving the feasibility for scrap processors physically located in Maryland to continue to pay the bounty rebates. Starting in the month of July, 1974, the month in which the amendment took effect, the volume of deliveries to Plaintiff of eight year old or older, totally inoperable vehicles from Maryland transferred through indemnity agreements has diminished to the extent indicated by the following table:

Month	*Indemnity Agreement*	*VR-20 and Titles*	*VR-46*	*VR-28*	*Flattened Cars*	*Total*
January	1957	22	149	360		2488
February	1566	20	233	414		2233
March	2079	36	153	186		2454
April	2370	39	390	208		3007
May	1968	27	119	188		2302
June	1309	29	153	278		1769
July	518	7	52	276		853
August	849	40	154	1489		2632
September	471	23	128	579		1211
October	625	45	122	352	596	1740
November	786	46	94	517	350	1713
December	568	18	39	949		1574

* Flattened cars are received by Plaintiff in a semi-processed state and, in some cases, are not accompanied by any documentation.

13. More particularly, the Plaintiff has suffered a dramatic diminution in the number of bounty-eligible vehicles received from these unlicensed Maryland towers who participate in the bounty program. During the three months immediately prior to July 1, 1974 (April, May and June, 1974), Plaintiff acquired a total of *1,879* vehicles from an aggregate of eight unlicensed Maryland vehicle towers who were paid a bounty-enhanced price for the hulks. The Motor Vehicle Administration paid Plaintiff $30,064.00 in bounties for the destruction of those vehicles most of which was rebated to the towers who submitted the vehicles. During the next three months (July, August, and September, 1974), the Plaintiff acquired a total of *27* vehicles from those same eight towers and collected a bounty of $432.00, most of which was rebated to the towers who submitted the vehicles.

14. Further, a single tower in that group who delivered *691* of the bounty-eligible vehicles in interstate commerce from Maryland during the two month period prior to the effective date of the amendment, has delivered *none* to the Plaintiff since that date. This tower has instead dealt on an intrastate basis with Joseph Smith & Sons, Inc., a Maryland-based competitor for automobile hulks in the Prince George's-Montgomery County area.

15. The police Certificate of Authority (Form VR-20) is seldom relied upon as a means of transferring title to an abandoned motor vehicle. Prior to July 1, 1974, that document was seldom employed to dispose of a motor vehicle if the indemnity agreement method was available, that is, if the vehicle to be destroyed was eight years old or older and totally inoperable. That form, before July 1, 1974, was used, if at all, only if the car were less than eight years old or if the police had taken the car into custody.

Upon the enactment of the amendment to §11-2002.2(f)(5), the Plaintiff was advised by the Maryland Motor Vehicle Administration that the VR-20 forms were an alternative to the indemnity agreements formerly used by the Plaintiff's customers to establish

their claims to the bounty rebate offered by the Plaintiff. The Plaintiff advised its regular bounty customers only of this change in the law, and invited their further bounty business. These regular bounty customers were supplied with VR-20 forms, the detailed procedures for obtaining the Certificates of Authority were explained to them, and the customers were given a list of police departments where the Certificate could be obtained.

The response to this change of procedure was an almost total abandonment of Plaintiff by its former regular bounty customers. They nearly unanimously commenced disposing of their vehicles to Maryland scrap processors who could collect the bounty by submitting an indemnity agreement. New customers, after expressing interest in the bounty rebate and being told of the procedures necessary for obtaining it, became discouraged and pursued the matter no further.

Most of the former regular bounty customers have been lost entirely. Those few which remain have managed to work out individual arrangements with Maryland police departments whereby they may still participate in the program. One customer, because he was able to obtain a wrecking yard, became a licensed wrecker and participated in the bounty program as such. The customers who have not gone to those lengths to remain a bounty customer of Plaintiff have simply gone elsewhere where they could continue to operate much as they did in the past.

16. Much of the "obsolete scrap" which scrap processors buy is acquired from people who slip in and out of the market according to the fluctuation in prices being paid for automotive hulks. A price drop from $31.00 per ton to $20.00 per ton, for example, is enough to dry up the intake of old cars. Conversely, high prices for scrap encourage collecting from areas not usually considered sources of scrap.

17. The scrap processors are totally subject to the needs of the steel mills. Contracts to supply scrap to mills are of short duration — frequently no more than

30 days in duration, When the mills do not need scrap, there is no market for the processed scrap. When there is a demand for scrap, the mills pay no more than the current market price prevailing in the territory. Furthermore, if the price of scrap declines during the term of a contract, the mills often cancel and buy at the lower price. If the price of scrap increases during the contract term, however, the scrap processors are held to the original lower prices.

Because, unlike many other commodities, there is no central exchange or clearing house for scrap, its price is not easily ascertainable on a day to day basis. The price for a scrap is set by the mills, not the scrap processors. Consequently, the difference between profit and loss in the scrap processing business is buying old cars at the right price and at the right time.

18. The assurance that a bounty is readily available for the destruction of old cars is an immeasurable business advantage for those processors who can take advantage of it. First, the collection of the bounty offers a cushion against loss arising from a sudden drop in scrap prices — a not infrequent occurrance in the industry. Second, in times of scarcity of old cars when both the offering price is high and the competition for the available cars is sharpest, the ability to offer a rebate which is, in effect, an offer of a higher price without increasing the cost of the raw material to the processor; imparts a distinct competitive edge to those processors fully able to participate in the bounty program.

ISADORE GITTLESON

Subscribed and sworn before me this day of January, 1975 as witnessed by my hand and Notarial seal.

Notary Public

AFFIDAVIT OF THOMAS E. HARRIS

State of Maryland,
Anne Arundel County To wit:

I hereby certify that on this day of January in the year 1975, before me, a Notary Public, personally appeared Thomas E. Harris who made oath in due form of law that the facts hereinafter stated are true to the best of his knowledge, information and belief and would constitute the substance of his testimony concerning said facts if he were called to testify at a trial of the matter at bar.

1. He is the Chief, Licensing and Consumer Services Division, Motor Vehicle Administration, Department of Transportation, State of Maryland. He has personal knowledge of all aspects of the Motor Vehicle Administration's administration of Maryland's Abandoned Motor Vehicle Bounty Program. In that capacity, he has and continues to come into contact with scrap processors, licensed wreckers, unlicensed towers and others who participate in the program and members of various law enforcement agencies who assist in the administration of the program. He has been associated with the program since its inception and is fully aware of the Motor Vehicle Administration's understanding of the Legislature's intention as to how the relevant statutes should be construed and administered.

2. He has reviewed and approved the 17 pages of Appendix A hereof and has found them to be true and accurate statements of the facts they purport to represent.

3. He has reviewed and approved the 17 pages of Appendix Two hereof and has found them to be true and accurate statements of the facts they purport to represent.

4. The Motor Vehicle Administration construes Article 66½, §11-1002.2(f)(5) of the Annotated Code of Maryland (1970 Replacement Volume, 1974 Cumulative Supplement), as amended by Chapter 465, Acts 1974, effective July 1, 1974, to reflect, among other things, the Legislature's desire that the Motor Vehicle Administration not make a bounty payment to a scrap processor not located in Maryland for the destruction of a vehicle abandoned outside of Maryland.

5. Contrary to the assertion made by Mr. Isadore Gittleson in paragraph five of his Affidavit of January 16, 1975, prior to the effective date of Chapter 465, *supra*, plaintiff in the captioned matter submitted in connection with claims for bounty payments a number of indemnity agreements which indicated that the origin of the vehicle was the Police Department of the District of Columbia.

6. The records of the Motor Vehicle Administration indicate that the "single tower" to whom Mr. Gittleson refers in paragraph fourteen of the said Affidavit is probably the George Underwood firm which is a Maryland based concern, but which, prior to the effective date of the subject legislation, delivered to the plaintiff for ultimate claim of bounty payment a number of motor vehicles which had been abandoned in the District of Columbia, e.g. during the period beginning 3-5-74 and ending 3-8-74 said George Underwood his agents or servants executed approximately fifty-six indemnity agreements in each of which he certified, under penalty of law, that the origin of the vehicle was the Police Department of the District of Columbia, and each of which was ultimately the subject of a claim for bounty payment to the plaintiff pursuant to the indemnity agreement method.

7. That it is the practice of scrap processors participating in Maryland's Bounty Program to require their sources of scrap hulks to have the Vehicle Identification Number Plate detached prior to arrival of the vehicle at the scrap processor's place of business and to present the previously detached VIN plate with appropriate documentation whenever motor vehicle bounty is to be sought thereon.

8. That as a result of the practice described in the immediately preceding paragraph, on at least two occasions prior to July 1, 1974, the Motor Vehicle Administration was presented with a claim for motor

vehicle bounty payment to the plaintiff on the basis of a VIN plate and an indemnity agreement documenting the destruction of a vehicle which another scrap processor had also certified as destroyed as evidenced by the other processor's tracing of the serial number of the vehicle.

9. That as a result of the procedure described in the preceding paragraphs, until July 1, 1974 when the Motor Vehicle Administration developed a computer capability for comparing vehicle destruction reports, it was possible for the plaintiff to receive vehicles which had been abandoned outside of Maryland and which were accompanied by the VIN plates of other vehicles which had previously been titled in Maryland.

10. The Motor Vehicle Administration construes Article 66½, §11-1002.2(f)(5) of the Annotated Code of Maryland (1970 Replacement Volume, 1974 Cumulative Supplement), as amended by Chapter 465, Acts 1974, effective July 1, 1974, to require Maryland scrap processors to secure an indemnity agreement for the vehicles described therein regardless of whether or not a claim is to be made for the payment of bounty for the destruction of that vehicle.

11. The securing of a Police Certificate of Authority (VR-20) for the destruction of a vehicle eight model years of age or older and inoperable, abandoned in Maryland and previously titled in Maryland, involves submitting to a procedure which the Maryland State Police are able to complete in Montgomery, Prince George's, Charles, and Calvert Counties within an average of approximately seventy-two hours from the filing of the application therefor.

THOMAS E. HARRIS

Subscribed and sworn before me this day of January, 1975, as witnessed by my hand and Notarial seal.

Notary Public

LETTER OF JANUARY 14, 1975

Carl E. Eastwick, Esq.

J. Michael McWilliams, Esq.
Judson P. Garrett, Jr., Esq.

Gentlemen:

Re: Alexandria Scrap Corporation v. Hughes, et al. Civil No. K-74-1030

I write to confirm the understandings reached during a telephone conference with counsel on January 8, 1975. It is the understanding of this Court that counsel will attempt, to the very fullest extent possible, to stipulate to all relevant and material facts prior to the hearing before a three-judge court, which has been tentatively scheduled for 2:30 p.m. on January 31, 1975. I understand that Mr. Eastwick will submit to this Court, on or before January 15, 1975, a stipulation agreed to by both sides along with, in appropriate form, proffers and affidavits with regard to relevant and material facts concerning which counsel are not able so to stipulate; and that Mr. Garrett will respond to the same and will submit such counter-proffers as he desires to submit, on or before January 22, 1975. I further understand that any and all other documents, including memoranda of law, if any, which counsel wish to submit to this Court will be submitted by that latter date.

With regard to plaintiffs' motion for preliminary injunctive relief, both sides have agreed that that motion will be held and remain *sub curia* pending developments during the hearing on January 31, 1975.

Very truly yours,

FRANK A. KAUFMAN

P.S. Since dictating the above, I have received a letter dated January 9, 1975 from Mr. McWilliams requesting that the hearing scheduled on January 31, 1975 be rescheduled for February 7, 1975. I also have received Mr. Eastwick's letter dated January 13, 1975.

On January 13, 1975 Judge Haynsworth designated Judge Winter, Judge Miller and myself to hear this

case. Judge Winter will be in the Court of Appeals during the week of February 3, 1975. Accordingly, since Mr. McWilliams has informed this Court that he is ending a four-day arbitration case on the 31st of January involving arbitrators and lawyers from out of town, the hearing in this case will be held on Friday, February 14, 1975, at 3:30 p.m.

F.A.K.

cc: Honorable Harrison L. Winter
Honorable James R. Miller, Jr.

LETTER OF JANUARY 16, 1975

The Honorable Frank A. Kaufman
United States District Court
for the District of Maryland
Room 310, Courthouse
111 N. Calvert Street
Baltimore, Maryland 21202

Re: Alexandria Scrap Corporation v. Hughes, et al, Civil Action No. K-74-1030

Dear Judge Kaufman:

I am enclosing herewith two copies each of the executed Stipulation of Facts, and an unexecuted Affidavit which contains the proffers of fact submitted by the Plaintiff.

The original of the Affidavit has been sent to Alexandria for execution and will be filed with the Clerk as soon as it has been received by us in executed form. In the meantime, copies of this Affidavit, which constitutes our formal proffer in this case, have been furnished to counsel for the Defendants, as indicated on the Certificate of Service.

Two copies each of the Stipulation and Affidavit have also been hand-delivered to the offices of Judge Winter and Judge Miller.

I regret the brevity of the Stipulation and the length of the Affidavit. During conferences last month, counsel

for the Defendants verbally agreed to stipulate to some of the material now contained in the Affidavit. Unfortunately, counsel has since retreated from this verbal agreement for reasons not readily apparent to us. However, we understand that the Defendants will review the Affidavit during the coming week and will consider stipulating to those portions which are not genuinely in dispute.

On the latter subject, we previously extended an invitation to the Defendants last December to inspect the records of Alexandria Scrap Corporation in order for them to satisfy themselves as to the accuracy of the statistical data set forth in the Affidavit. By a copy of this letter we hereby renew that invitation. If counsel for the Defendants desires to accept this invitation, I would appreciate a telephone call in order that we may accede to any reasonable request prior to their filing deadline on January 22, 1975.

Respectfully yours,

CARL E. EASTWICK

CEE:ls
Enclosures
cc: Hon. Harrison L. Winter
Hon. James R. Miller, Jr.
J. Michael McWilliams, Esquire
Judson P. Garrett, Jr., Esquire

LETTER OF JANUARY 22, 1975

Carl E. Eastwick, Esq.

J. Michael McWilliams, Esq.
Judson P. Garrett, Jr., Esq.

Gentlemen:

Re: Alexandria Scrap Corporation v. Harry R. Hughes, et al. — Civil No. K-74-1030

I thank you for the "Stipulation of Facts" filed in this case. I note, however, that in the last sentence of the

first unnumbered paragraph on the first page of that document there is a statement which reserves to the parties the right to present additional proof under certain circumstances. While this Court can well understand that type of a reservation, this Court will also understand, unless it is notified to the contrary on or before January 31, 1975, that this case will be presented and argued on February 14, 1975 solely on the basis of the facts set forth in the said stipulation.

Very truly yours,

FRANK A. KAUFMAN

cc: Honorable Harrison L. Winter
Honorable James R. Miller, Jr.
Official Court File

LETTER OF JANUARY 24, 1975

The Honorable Frank A. Kaufman
United States District Court
for the District of Maryland
Baltimore, Maryland 21202

Re: Alexandria Scrap Corp. v. Harry R. Hughes, et al. — Civil No. K-74-1030

Dear Judge Kaufman:

I am writing in response to your letter of the 22nd in which you acknowledge receipt of the "Stipulation of Facts" and express concern regarding the last sentence of the first unnumbered paragraph on page one thereof in which the parties reserved "the right to present additional proof under certain circumstances."

I am also in receipt of a copy of a responsive letter from Carl E. Eastwick, Esquire, counsel for the plaintiff, who advises Your Honor, "the Plaintiff intends to present argument on February 14, 1975, solely on the basis of the facts set forth in the Stipulation and the Affidavit of Isadore Gittleson, filed in the above captioned case."

Please be advised that the defendants' intentions are similar, i.e., defendants intend to present argument on February 14, 1975, solely on the basis of the facts set forth in the Stipulation and in the Affidavit of Thomas E. Harris, it being defendants' understanding that the hearing which has been scheduled for that date will involve a resolution of the jurisdictional questions raised in defendants' Motion To Dismiss and a determination as to whether or not a future evidentiary hearing is needed based upon the extent to which the Court finds the Affidavits to demonstrate a difference as to material facts.

Respectfully,

J. Michael McWillians,
Assistant Attorney General,
Counsel to the Department
of Transportation.

cc: Honorable Harrison L. Winter
Honorable James R. Miller, Jr.
Carl E. Eastwick, Esquire

TRANSCRIPT OF PROCEEDINGS

[1] *In The United States District Court*
for the District of Maryland

No. 74-1030K Civil

Alexandria Scrap Corporation

v.

Harry R. Hughes, Secretary, Maryland Department of Transportation, et al.

Baltimore, Maryland
February 14, 1975

The above-entitled case came on for hearing before The Honorable Harrison L. Winter, Associate Judge,

U.S. Court of Appeals, Fourth Circuit; The Honorable Frank A. Kaufman, Associate Judge, U. S. District Court for the District of Maryland; and The Honorable James R. Miller, Associate Judge, U. S. District Court for the District of Maryland, at 3:30 o'clock p.m.

APPEARANCES

For the Plaintiff:

Norman P. Ramsey
H. Thomas Howell
Carl E. Eastwick

For the Defendants:

Judson P. Garrett, Jr.
N. Barton Benson

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[2] (Judge Winter) Good afternoon.

Gentlemen, I do not have a complete duplicate of the Clerk's file. Do we have cross motions for summary judgment in this case?

(Mr. Garrett) No, Your Honor.

(Mr. Ramsey) We do not, sir.

(Mr. Garrett) There are no motions for summary judgment. There is a motion to dismiss.

(Judge Winter) But each side in turn has offered data outside of the pleadings.

(Mr. Garrett) Yes, Your Honor.

(Judge Winter) Query, should we treat these as cross motions for summary judgment?

(Mr. Ramsey) If the Court please, I think that the way we visualized it at the time we were conferring with Judge Kaufman was that in addition to the complaint and the motion to dismiss, there is before the Court a motion for preliminary injunction, for preliminary injunctive relief, and it was in connection with the assemblage of data which might bear on that that we visualized the structuring of those.

Now, we did not file cross motions for summary judgment.

(Judge Kaufman) Mr. Ramsey, quite frankly, I did not catch up with this till last night. I had thought there [3] were going to be cross motions filed and that the argument today was going to be on the basis of both preliminary and final relief, with the understanding that if any of the disputed facts were considered material and relevant by the Court, then the Court would determine whether or not any evidentiary hearing was necessary and how it would be held.

(Mr. Ramsey) Well, Your Honor, and Judge Winter and Judge Miller, our reaction to it was we were conscious of the procedural posture of the case and we thought that possibly the same thing could be accomplished by addressing ourself to the motion to dismiss and to the motion for preliminary injunction within the framework of what we must demonstrate in order to get preliminary relief, and then the Court could take the situation in hand as respects that aspect of it and if we proceed to final relief, it would only require a finalization of the record in the form of an answer and/or a motion for summary judgment in connection with the stipulated or the memorialized facts in affidavits.

(Judge Kaufman) Would it be satisfactory then from the point of view of both sides to consider today that you are orally stating motions for summary judgment, in the event that the Court does not consider it necessary to go further into the disputed factual areas?

(Mr. Garrett) Your Honor, it is our contention that there is a dispute as to material fact.

[4] (Judge Kaufman) I know, but suppose the Court came to a different conclusion.

(Mr. Garrett) Fine. Then I think the Court could grant summary judgment on the basis of the pleadings at this point. The state would not want to move for summary judgment though, because we would necessarily have to concede in doing so that there is no dispute as to material fact.

(Judge Kaufman) You could do it in the alternative if you wanted, which is what I did suggest to you.

(Mr. Garrett) Yes, Your Honor. My understanding, I think, of what Your Honor had told us in proceeding in this, it would reach the same result, and that is the motion to dismiss would come on for hearing today and that the Court would compare the affidavits to see if there was a dispute as to material fact.

If the Court found that there was and determined that it should deny the motion, then it would schedule an evidentiary hearing.

If the Court determined that there was no dispute as to material fact, then the Court would go on to decide the matter on the merits on the basis of our motion to dismiss supported by affidavits.

With respect to the preliminary injunction, I had asked the Court if the State should respond to that motion, and the Court had indicated that we need not because in the [5] Court's view, if the Court found that there was a dispute as to material fact, then it would necessarily follow that the Court would not be able to find that there is a likelihood of success on the merits and would not be able to issue the preliminary injunction.

So we have not responded to that motion.

(Judge Winter) The difficulty I have is certainly from the standpoint of the plaintiff, the case has been thoroughly briefed, and I do not know whether the State thinks it would have any additional authorities that would be of help to us in deciding the case, but from the standpoint of judicial efficiency, I think we would like to proceed to a final adjudication if we can.

Now, if technically all we are talking about is a motion to dismiss and technically all we are talking about is a motion for preliminary injunction, this certainly does not permit us to deal with the case dispositively on the merits because the tests are quite different.

The plaintiff does not have to demonstrate the invalidity of the statute as such in order to be entitled to a preliminary injunction. The most it has to establish is

reasonable likelihood or substantiality of it, and it seems to me we go through an awful lot of wasted motion.

I just wonder if both sides would not be willing to submit the case to the Court, on the argument about to be [6] had, on the merits, but let it be understood that if in the course of argument or in the course of the Court's deliberations, either you or we find that there are factual aspects that are unresolved and that may be determinative, that we are not going to foreclose you from presenting additional proof.

(Mr. Ramsey) We could approach it that way, sir, because in fact the only claim conflict, as we see it, between the affidavits we would contend to be immaterial as respects the disposition of the issue, so accordingly we have in effect framed our thinking as though we were arguing to a motion for summary judgment.

And we realized that we had at the outset the question of legal sufficiency of the claim in the first instance, then we would have arrived at an argument as respects the sufficiency of the case for final disposition, and we would anticipate that our argument would be that if preliminary follows and the facts are immaterial, we would be entitled to summary judgment.

So we can deal with it in that context, if that is agreeable to the State.

(Mr. Garrett) Your Honor, the State would have no objection to going forward on that basis as long as the Court would recognize our strong position that we view this as there being a dispute as to material fact, and should the [7] Court disagree with us and decide the case on the merits against us, we would want that issue preserved for appeal.

(Judge Winter) Of course, it ought to be preserved for appeal. Could you in your argument give us a short summary or precise—

(Mr. Garrett) Yes, Your Honor.

(Judge Winter) —of the material facts which you think you would dispute? This would help preserve your right

in the record, but I think more importantly would call to our attention the area of the facts in which there may be room for fact finding, if we think that this has a direct bearing on the result to be reached.

(Mr. Garrett) Fine.

(Judge Winter) All right. If that be so, then I would assume, gentlemen, that we will proceed on that basis and that the plaintiff has the right to open and close.

* * * * * *

[41] (Mr. Garrett) May it please the Court, at the outset I'll make some comments regarding the workings of this statute, at least how it is administered and how we feel it should be administered.

First of all, I think it is true that the statute does not specifically provide that vehicles must have been adandoned in Maryland in order to qualify for the bounty. However, we have all seen cases in which the Legislature has not expressly provided a prohibition but the history and the obvious purpose of the statute is seen and read and held to imply such a condition.

Now, what is this statute all about?

The history of it indicates, the reports indicate that Maryland was concerned about abandoned vehicles, not about the scrap industry primarily. We wanted to move these hulks that were road hazards, that were hazards to the environment. The Court of Appeals even cited, I think, vermin cropping up in some of these hulks.

[42] So we had an environmental problem. We wanted to move these things out. This was not an attempt to subsidize scrap processors.

Now, I submit that the Maryland Legislature was not interested in cleaning up the roads of D. C. I submit the General Assembly of Maryland feels no greater obligation to the District of Columbia than the District of Columbia or Virginia feel to Maryland in this regard.

I point out that we have what is a unique program in this country. We are the only state that pays this sort of a bounty, so I think it is very important to keep that in

mind. It is an obvious fact that can be overlooked, it is so obvious.

(Judge Miller) How does this amendment prevent the picking up of vehicles that were abandoned someplace else? It seems to me if that is what they want to do, the amendment would have said that, not something else.

(Mr. Garrett) What we have is an eleventh-hour, in-the-halls handwritten amendment, and I'm prepared to present witnesses—

(Judge Winter) That can cut two ways.

(Mr. Garrett) That's right, they cut both ways, but, you know, in the legislative experience, what we had was this.

The history of this is that at the outset, bounties [43] were being paid and the statute was being enforced literally and no more. The Motor Vehicle Administration was not requiring a showing that the vehicle be abandoned in Maryland. They were checking the VIN plate against their computer and if it had been formerly titled, they paid off, assuming everything else was appropriate and in order.

The scrappers found they had a problem, and that was they could not rely on the sources of their hulks. Scrappers in some instances were raided. I think there was a case that got national recognition out of Montgomery County in which somebody destroyed an antique vehicle. I don't know whether there was litigation that came out of that or not, but it hit the press.

Scrappers started requiring indemnity agreements. Scrappers then decided that they wanted the Legislature to say that you had to give a scrapper one of these agreements if you didn't have some other form of documentation permitted by the statute.

So they stuck a bill in, and the bill applied across the board to all scrappers.

It dawned on somebody at that point that it is possible for out-of-state scrappers to recover abandoned cars out of state, for example in the State of Virginia or

in the District of Columbia, and run them through MVA and secure bounty payment.

[44] The Legislature decided that the way to cure this was to deal with the indemnity provision proposal it had before it at this point in the legislative session, so what they decided was this.

With regard to all of these other forms, although this doesn't hold for titles but as the Court pointed out, we don't have an eight-year-old car title problem, there aren't that many.

In the police certificate situation, you are dealing of necessity under the statute by definition with a Maryland police agency that has to certify the car was abandoned in its jurisdiction. We don't have that problem of the police certificate.

With respect to the auction provision, that is not any entrepreneur or auctioneer. Under the statute, that's a governmental auction, which requires certain kinds of notice, so it's a limited type of auction that takes place in Maryland.

We don't honor any of these certificates from out-of-state cities under the auction certificate process. That's limited to Maryland.

The big loophole was the cars that come in with the indemnity agreement, so they did what I have told them afterwards — I wasn't there at the time, nobody from the office was there. They wrote what is a very bad statute in terms of draftsmanship, but they dealt with the bill they had [45] at that point in the Legislature.

(Judge Miller) But if that was their purpose, it does not accomplish it.

(Mr. Garrett) Well, it does this immediately, Your Honor—

(Judge Miller) Isn't it true that under this amendment as it now stands, under the statute as amended, an in-state processor can get a car from an unlicensed tower from outside the state and get the bounty right now under this statute?

(Mr. Garrett) That's right.

(Judge Miller) That is not prevented at all. So how can you say that this prevents the picking up of automobiles outside of the State of Maryland?

(Mr. Garrett) Well, first of all, as has been alluded to earlier, there is a point of no return here. The cost of shipping these things is such that they're only going to come from distances relatively close to Maryland.

We believe the Legislature decided, perhaps unwisely, that while they could indulge a presumption that plants located in Maryland were drawing all or the majority of these kinds of hulks from Maryland, they would not indulge that kind of a presumption with regard to out-of-state scrappers.

(Judge Miller) Where is the legislative history that shows that this was the purpose of the—

(Mr. Garrett) Of the amendment?

[46] (Judge Miller) Right.

(Mr. Garrett) We have none. There is no legislative history in Maryland, unfortunately.

(Judge Miller) I understand that. So if the amendment does not accomplish the purpose which you say was the purpose of the amendment, then where are we?

(Mr. Garrett) Well, Your Honor, where we are is that in regard to equal protection, it's not even necessary that the Maryland Legislature had thought this. The Court can go on any rational basis that the Legislature might have used, whether it used it or not.

We submit, although the cases that I read do not deal with this under the Commerce Clause, in dealing with the reasonableness of the burden under the Commerce Clause, that this is also true, that the burden is not upon a state to show what was in the minds of the General Assembly, that can't be demonstrated, but that the Court will look to what might have been in the minds of the Assembly and if it's reasonable, it's reasonable, however unwise.

Now, we submit that that's what they did in this case.

(Judge Miller) Is that the only reason that you can come up with for the amendment?

(Mr. Garrett) I happen to know that that's why it happened the way it happened. Now, we believe that the Motor [47] Vehicle Administration should deny, and were we not in litigation, the Attorney General would be informing them by formal Opinion that they should refuse to pay a bounty on any vehicle abandoned outside of the State of Maryland and that they should adopt a regulation which requires some sort of demonstration—

(Judge Winter) There is no such regulation now?

(Mr. Garrett) There is none at this point in time.

(Judge Miller) The indemnity agreements that the in-state processors use do not show where they pick up the cars, do they?

(Mr. Garrett) No, Your Honor, they do not.

(Judge Kaufman) Even if that is the purpose and even if you assume arguendo that it is, when you step back from this statute as it exists since the 1974 amendment, don't you come up with the following?

If Alexandria Scrap wanted to set up a separate processing plant in Maryland or buy a small processing plant in Maryland, at that point it could utilize that small processing plant or its plant in Alexandria and take the cars to either plant and get the bounty; isn't that correct?

(Mr. Garrett) If we adopted that sort of regulation—

(Judge Kaufman) Isn't that what you have in effect today?

[48] (Mr. Garrett) First of all, today we license locations, so the fact that a firm has a Maryland location does not necessarily mean that we will accept payments on the basis of cars destroyed at other locations.

(Judge Kaufman) What do you do in practice? The record does not make this clear and perhaps this would have to be established in the record before we could

base an opinion on it, but we all know that there are scrap processors in the State of Maryland that have plants in other states.

Now, are you careful to check to make sure before you pay a bounty that the processing is done in Maryland? If you do, then why do you do it? Why do you care where the processing is done by the processor, as long as you get the car destroyed and off the dump heap?

(Judge Miller) Plus the fact that for other cars, they are obviously not processed in Maryland. The automobile sale cars and the auction cars can be processed outside the state.

(Mr. Garrett) The automobile sale car could be processed outside the state, but we are almost never talking about that with regard to the car which is eight years of age or older, and that's the only car for which you can use an indemnity agreement, so the bill of sale situation really isn't applicable here.

(Judge Winter) Except that the construction of the [49] Equal Protection Clause, Mr. Garrett, cuts both ways. It is not only what is done under a statute but it is what may be done—

(Mr. Garrett) Yes, Your Honor.

(Judge Winter) —irrespective of whether it is done in any consequential amount or not.

(Mr. Garrett) Yes, Your Honor.

Our practice until this date has been that we have licensed the locations to which plaintiff's counsel have referred. It may well be a fact that there is a Maryland firm with locations elsewhere. I was not aware of that. My understanding is that that firm is licensed only for its Maryland location and that we will pay bounty only for the cars that it destroys at that location, because it is obvious—

(Judge Winter) Except you do not ask him where he destroyed it.

(Mr. Garrett) We don't ask him—

(Judge Miller) You do not ask him where he destroyed it and you do not ask him where it was picked up.

(Mr. Garrett) Your Honor, we do require him to make an assertion that he is operating at X location. The regulations are specific about licensing a location. We require an assertion that he has destroyed it, I believe if not explicitly, implicitly, at that location.

We would not accept a request for payment on the [50] basis of a certificate of destruction that showed the car was destroyed in Charleston, South Carolina, because obviously they are not going to take a car to Charleston, South Carolina from Maryland.

(Judge Kaufman) Suppose a Maryland car is picked up down there and it has got a Maryland certificate on it. Aren't you required under the law to pay the bounty?

(Mr. Garrett) I don't think we are. I think the Legislature only intended that we clean up the streets of Maryland.

(Judge Miller) But that is not what the statute says.

(Mr. Garrett) No, it doesn't, and it would be better that it did say that, but that doesn't mean that this Court can't hold that as the clear implication of that statute and the intent of that statute.

(Judge Miller) If the purpose was that you could only pay a bounty on cars abandoned on the streets of Maryland, it seems to me it certainly would have been a lot easier to say that. You could have said that in about three words instead of the 15 or 20 sentences that you have in it.

(Mr. Garrett) I agree with Your Honor. We could have said it much more clearly.

(Judge Kaufman) As a matter of practice, does the State of Maryland send inspectors into the processing plants [51] for the purpose of trying to make sure that the processor who is operating under the indemnity route with the eight-year-old or older car is not engaged in handling illicit traffic?

(Mr. Garrett) I understand that they are audited.

(Judge Kaufman) Do you audit their records, or do you physically inspect the processing plants?

(Mr. Garrett) They inspect the plants. They do not go out with the request for a bounty payment and try to determine whether or not there was such a vehicle. Other than the annual—

(Judge Kaufman) What do they do when they inspect a plant?

(Mr. Garrett) With the Maryland plants, my understanding is that they make a physical inspection of the entire location.

(Judge Kaufman) For what purpose? What do they do when they get there?

(Mr. Garrett) They're first of all assessing as to whether or not these vehicles have been around on more than a six-month basis. There is this penalty that's involved.

They're also reviewing the records to try to determine if there are any irregularities with respect to the records that are kept and if they conform to the records of the Administration.

(Judge Kaufman) Leaving aside the record keeping [52] inspection, which could go on by simply inspecting records that were required to be kept in Maryland, what kind of physical inspection of the processing, plant in and of itself, as opposed to inspection of records, is either performed or is required?

(Mr. Garrett) Your Honor, I'm not aware of any. I must admit I haven't inquired into that, and I fail to see the pertinence of it.

(Judge Kaufman) The reason I think it is pertinent is that you might argue that if there is need to inspect the processing plant, then there is a legitimate Maryland interest in the 1974 amendment, in that to send inspectors outside of the State of Maryland where they would not be supported by the State Police and have the back-up that inspectors have within their own jurisdiction, that that would provide a proper basis.

But if there is no need to inspect physically the plant and all you need to do is to inspect the records, then I fail to see any reason that you have given up to now

why you should burden interstate commerce in the manner that it seems to me Mr. Ramsey and Mr. Howell rather persuasively argue you are doing.

(Mr. Garrett) Very well, Your Honor, let me respond to that.

The only way we are able to turn up evidence of wrongdoing with respect to the bounty program is through an [53] examination of records. We cannot after the fact determine whether or not X vehicle was destroyed. It is literally no longer in existence so we have to look at the documentation. That we do examine.

We have a regulation which requires that there be an office, and in fact the statute requires that there be an office in Maryland, and a regulation, which we have not enforced, which could require that records be kept there.

(Judge Miller) That you have not enforced?

(Mr. Garrett) No, Your Honor, we have not. The out-of-state processors indicated to us that it would be quite a burden for them to have to duplicate their records, that they needed records at their plant locations and to have to duplicate those and put them in Maryland would be an unreasonable expense, or at least a burdensome one.

(Judge Miller) Are you saying that you could have performed your necessary duty equally as well by looking at the records that they could have been required, and which by your own regulation they really are required, to keep in Maryland as you could have done by going to the plant itself?

In other words, you could do it as easily by looking at the records as you could by looking at the plant; is that right?

(Mr. Garrett) I think we would prefer to look at the plant.

[54] (Judge Winter) But your preference is because you will not be able to take an inventory on what is left there and assert the appropriate tax insofar as

determining whether vehicles had been properly destroyed.

(Mr. Garrett) We don't tax our-of-state locations, Your Honor. The tax is only on Maryland locations, so we have no taxing interest with regard to Alexandria.

Our interest with regard to Alexandria is whether or not they are destroying the vehicles that they indicate to us they're destroying. Our only contact with them is over payment of the bounty.

(Judge Miller) But I thought you said a few moments ago that you really do it by looking at the records.

(Mr. Garrett) Yes, Your Honor.

(Judge Miller) That is not just for the out-of-state, that is for the in-state too.

(Mr. Garrett) That's correct.

(Judge Miller) That is the way you do it. You do not do it by looking at their plant.

(Mr. Garrett) My understanding is that with the in-staters, we also look at the plant because we have other requirements for them, but we do not see our enforcement requirements or enforcement powers as being available to us with plants located outside of Maryland, so as to those plants, we are simply making sure that they are dealing honestly with [55] us when they ask for the payment of a bounty.

With regard to these other plants, we have a statute and regulations that say you have to have X equipment, et cetera.

(Judge Kaufman) Don't you require that they keep the plate that bears the serial number and the motor number?

(Mr. Garrett) We require that they submit that to us. They submit that to us.

(Judge Kaufman) When they turn that in, that in itself gives you pretty good proof, does it not?

(Mr. Garrett) That is the heart of our factual dispute. The system, as we understand it and as we are prepared to offer testimony on, is that when the hulks arrive at

the scrapper's plant, when they come to his front gate, they do not have the VIN plate physically attached.

(Judge Winter) What do yo call it? The VIN plate?

(Mr. Garrett) I'm sorry, Your Honor. V-I-N, vehicle identification number.

(Judge Winter) Thank you.

(Mr. Garrett) That plate has been detached before they get to the scrapper. I am told that the reason for this is that the flow of these vehicles is so large that many locations simply could not afford to have these hulks stacked up, particularly downtown locations, so the practice is that these plates are detached before the wrecker or tower brings [56] them to the plant.

Now, that means that the plant, acting in good faith, cannot demonstrate that the vehicle is actually the vehicle from which this VIN plate came.

Now, we maintain that in order to prevail in this case, the plaintiff has to show that there has been a substantial decrease in the number of vehicles flowing out of Maryland and to the plant, and we maintain that it is impossible for them to demonstrate that.

Their records are based on VIN plates which have been handed to them, and that's the reason that we cite in our affidavit two instances in which different operations claimed the same vehicle.

We know that two instances in themselves are not significant. Those are duplications of claims for the same vehicle, but what they demonstrate is an unknown iceberg of the number of vehicles never titled in Maryland that may show up at a plant's location with a Maryland VIN plate. It's a great way to get rid of a stolen vehicle.

(Judge Miller) But have you determined how many duplications of VIN plates there were in Maryland, in state?

(Mr. Garrett) We have no way — I'm sorry. Duplications in terms of the number of claims?

(Judge Miller) Yes.

(Mr. Garrett) I have not determined that fact, [57] because I simply wanted to demonstrate that cars were arriving without their rightful VIN plate to the plant.

(Judge Miller) But what I am getting at is I do not see really what difference it makes whether it is out of state or in state. That problem would exist no matter where the plant is, would it not?

(Mr. Garrett) What I'm saying now, Your Honor, is that in terms of burden of proof, the plaintiff is going to have to convince this Court that in fact X number of cars came out of Maryland prior to the effective date of the Amendment and that since July 1, X minus Y number of cars have come out of the State of Maryland.

And I'm saying to Your Honors in all sincerity the records of the plaintiff and the records of the Motor Vehicle Administration cannot demonstrate that.

(Judge Kaufman) Why would the plaintiff have to do that if the statute facially places an unfair burden, an unnecessary burden on interstate commerce or facially establishes a classification that cannot withstand an equal protection challenge?

What several of us have been trying to find out from you is: What do you get out of any physical inspection of the plant?

Now, if I understood you correctly, you said the VIN plate — by the way, Judge Winter just asked here at the [58] Bench what the N stands for in V-I-N.

(Mr. Garrett) V-I-N, N as in number.

(Judge Kaufman) Vehicle identification number.

(Mr. Garrett) Vehicle identification number, yes.

(Judge Kaufman) Now, if that plate is taken off before the wrecker or tower takes the vehicle to the plant, what are you going to discover anyhow when you inspect at the plant other than the number of vehicles that are there and how long a particular vehicle has been there? Your identity is gone anyhow.

(Mr. Garrett) Your Honor, first of all, I agree that if the statute is facially unconstitutional, it does not matter how many cars are involved.

Now, we take the position that the statute is not. We have a legal position on that.

(Judge Kaufman) Let me cut through now.

(Mr. Garrett) I really am trying to be responsive.

(Judge Kaufman) Just to get to this point that we have been close to several times and then backed away from, assume arguendo that this Court comes to the conclusion that prima facie there is a burden placed on interstate commerce that is unnecessary and that prima facie there is a suspect classification and that therefore the Court comes to the State and asks, What is the need for you to have the 1974 amendment, why do you need it, and you said one of the reasons— [59] or perhaps some of us have put the words in your mouth and you do not want them there and if so, please throw them back.

(Mr. Garrett) Okay.

(Judge Kaufman) But I have understood you to say that one of the reasons was you want the opportunity to inspect at the plant.

Now, you do not need to inspect at the out-of-state plant because you do not penalize the out-of-state processor for keeping a wreck around over six months.

Now, I thought there might be a reason to inspect to make sure that the car was not a stolen car or that there was not some kind of an illicit transaction going on, but you have now told us that as a practical matter, the VIN plate is off the vehicle before it gets to the processor.

(Mr. Garrett) Yes, Your Honor.

(Judge Kaufman) Therefore, what do you accomplish in terms of inspection of the processor's plant as opposed to inspection of the records?

(Mr. Garrett) First of all, Your Honor, the amendment had nothing to do with inspection and in no way changed what takes place with regard to inspection. I believe that's our difficulty.

Both before and after the amendment, we have inspected in-state scrappers in one way, we have

inspected out-of-state scrappers in another way, and the difference [60] between those two reflects the fact that the statute places upon the Administration certain duties with regard to in-state scrappers beyond assuring that the bounty is being paid properly, whereas with regard to out-of-state scrappers, that is our only responsibility and our only interest.

Now, with regard to the burden, either the statute is facially unconstitutional or it's not. The burden, I submit, is really a factual determination in Commerce Clause cases. It's really difficult to look at this thing and decide it's unconstitutional if there is no burden in terms of actual numbers of cars.

I submit if the parties stipulated that the plaintiff had only lost on the average of two cars a month, the Court would say it is not unconstitutional. It literally boils down to that kind of a judgment in this case with respect to deciding whether or not there is an undue burden.

In a Supreme Court case that the plaintiff cites with approval, Hood v. Dumond, Mr. Justice Jackson, after citing several cases, said at 336 U.S. 531 and 532:

"It recognized," and he's citing several cases, "as do we, broad power in the State to protect its inhabitants against perils to health or safety, fraudulent traders and highway hazards, even by use of measures which bear adversely upon interstate commerce."

Now, the suggestion that we can't affect interstate [61] commerce adversely is just not true as a matter of law. We can. The question is—

(Judge Miller) Nobody is suggesting you cannot, but the point is that if you do, there has to be some pretty good justification.

(Mr. Garrett) There has to be a reasonable basis for it, yes, Your Honor.

Now, first of all, if I may we take the threshold position and quite seriously, that we are not subject to the Equal Protection Clause and the Commerce Clause in this situation, and I'd like to speak to that for just a second.

It is true, as the plaintiff points out, that the General Assembly in enacting this legislation has exercised a police power, no doubt about it, and the Court of Appeals said so.

But the Legislature can exercise both powers at the same time. It's not limited to exercising one or the other.

What is the dispute in this case about? Maryland has said, We will pay bounties to in-staters under these circumstances and to out-of-staters under these circumstances. Maryland is not, as with most of the Commerce Clause cases relied upon by the plaintiff, saying hulks are coming out of the cycle of interstate commerce. Maryland is not saying, You can't bring hulks into Maryland or you can't take them [62] out or we're going to tax you unreasonably upon that exercise.

We're not setting up any kind of a monopoly here for the State of Maryland. As a matter of fact, I suggest that we could achieve the same thing more clearly by giving some kind of a corporate tax rebate on these. There would be no doubt that we could do that for in-state corporations and would not have to do it for out-of-state corporations. We could perhaps do it on the basis of the assessment that we levy on these right now.

So what I'm saying is I don't think there's any question that Maryland could limit this bounty first of all to vehicles abandoned in Maryland, and that although that might affect interstate commerce, that effect would not be an unreasonable burden simply because it affected interstate commerce.

We clearly are acting not under a subterfuge but as a result of a real concern and a real public-health kind of problem.

(Judge Miller) You probably could limit it to vehicles abandoned in Maryland, but that is not what this amendment does.

(Mr. Garrett) We think it does. Whether it does it as well as it could be done or not is another argument, but this statute says—

(Judge Miller) An in-state processor can get money [63] for a car picked up outside of the State of Maryland under this amendment; isn't that correct?

(Mr. Garrett) I think not. I tell Your Honor that the Motor Vehicle Administration has administered it on this basis. When I became involved in this case, I pointed that out to the Administration, and were it not for the Attorney General's policy against issuing Opinions on subject matters which are also before the Courts at the same time, we would be telling them that the clear intent of the Legislature is that we clean up the streets of Maryland only and that they must require some kind of—

(Judge Miller) But that is because of a regulation that you are saying has apparently been adopted, although there is not any regulation, there is just a policy or something like that and it is not written anywhere.

But in any event, it is not because of the statute, it is because of some policy, because the statute does not say anything one way or the other on it.

(Mr. Garrett) No, I must differ, Your Honor. You are testing the statute in this case and the statute includes not only the words that the Legislature enacted but their intention.

(Judge Miller) But the problem is: Where do you get the intention from? Apparently there is not a regulation which would interpret it that way and there are no words in [64] the statute which say that. It is only what you are saying.

(Mr. Garrett) No, we have submitted a Legislative Council report or two that show the history of this and what the concern of the Legislature was, and I think a reasonable man could conclude from that that the General Assembly's concern was limited to Maryland's highways and byways. I don't think there is any doubt about that. It is implicit, it is not explicit, but it's still part of the statute.

(Judge Miller) What I am getting at is that your policy of paying only for automobiles abandoned in Maryland exists whether this statute was amended or was not

amended. Isn't that true? The amendment of this statute did not enhance or take away from the policy which you say is the policy; isn't that right?

(Mr. Garrett) That's absolutely right.

(Judge Miller) All right. Then how can you use this amendment to say that this somehow means that you cannot pick up automobiles that were abandoned someplace else?

(Mr. Garrett) Given that implication in the statute, what the amendment then does is make it more difficult for people to lie to us, to commit perjury.

(Judge Miller) Why?

(Mr. Garrett) Because the amendment says that you can't come in by means of an indemnity agreement if you're out of state. The amendment in effect—

[65] (Judge Miller) I do not think out-of-staters have a monopoly on perjury.

(Mr. Garrett) No, we're not saying that, Your Honor. All we're saying is that we're presuming on the basis of physical location that you are more likely to get vehicles from outside of Maryland if you're located outside of Maryland, and you're more likely on the basis of physical location to get vehicles from inside of Maryland if you're located inside of Maryland.

Now, if that doesn't stand the test of rationality, it's clearly unconstitutional, assuming the Court finds that the Equal Protection and Commerce Clauses apply to us in this situation, and again we strongly maintain that what we're doing with regard to bounty money is not an exercise of police power. And the plaintiff mentions it and characterized it very well.

I thought I had the reference but I don't. The plaintiff tells us in its memorandum, and I'm sure the Court will find it, that what we are doing in effect is paying for the service of removing these things from the roads.

I submit to Your Honors that that is no different than the State of Florida paying for the service of having its high school annuals printed in the state, and I suggest to Your Honors—

(Judge Winter) Except that the high school annuals is a species of personal property which it is going to consume. [66] You could argue from now until doomsday and I do not think you could convince me that this bounty is part of an overall exercise of police power by the State of Maryland for the benefit of the inhabitants of Maryland and the state as a whole.

(Mr. Garrett) I would agree with you that it is in furtherance of the exercise of that police power in the legislative scheme, which is generally a police power scheme, but I suggest to Your Honor that it may even be analogous to welfare, and the Supreme Court has not told us that we cannot discriminate against nonresidents in welfare. They have said you can't impose durational residency requirements, and the Social Security Act may say something about that, but constitutionally Maryland can say, We will not give our money to you if you're not a resident of Maryland.

(Judge Winter) You have been held subject to other provisions of the Constitution. Or let me put it this way. Other provisions of the welfare legislation have been declared invalid.

And if your theory is that this is simply a giveaway, it is a bounty, it is a proprietary function, the Constitution does not apply, these cases stand against you.

(Mr. Garrett) Your Honor, I disagree. I think that Maryland could decide tomorrow that it was going to get into the scrap business or that it was going to get into the [67] car towing business and could use its resources in a proprietary capacity to clean up the highways and byways of abandoned vehicles.

(Judge Miller) That may well be, but it has not done that.

(Mr. Garrett) But clearly that would have a substantial burden upon the plaintiff's interstate commerce, and I don't think this Court or any other Court—

(Judge Winter) Let us argue the case before us and not think up some other ones.

(Mr. Garrett) But I think that illustrates the function we're performing in the bounty piece of this program, Your Honor, and that's why we maintain that it really is a proprietary function when we pay.

(Judge Winter) Simply because it could be recast in another form, Mr. Garrett, does not mean that it possesses that form now.

(Mr. Garrett) That's true, Your Honor.

(Judge Winter) So I think we have to look at it now as part of the overall scheme.

(Mr. Garrett) Now, if I may, I would like to point out a couple of things that are taking place here.

Number one, the Legislature's concern about out-of-state scrappers getting bounty on vehicles abandoned out of Maryland is genuine. The affidavit indicates that the plaintiff claimed bounty by means of 56 indemnity agreements [68] for 56 vehicles over a three-day period, all of which indicated on their face that the origin of the vehicles was the D. C. Police Department.

(Judge Miller) Has the DMV in any written publication stated to the processors, We are not paying bounty on any automobile picked up outside of the State of Maryland?

(Mr. Garrett) No, Your Honor.

(Judge Miller) What difference does it make then? If this is just some policy that is kept locked in the recesses of the mind of the Administrator, I do not see how we can base a decision on that.

(Mr. Garrett) Well, I submit that the Court is testing the statute. I tell the Court today as a matter of record that it is my opinion that the Administration has not complied with the statute in this respect and that its payment of bounty for vehicles it knew were abandoned outside of Maryland was not pursuant to the statutory command.

I have told the Administration that and I believe that the changes will be forthcoming, but I don't know that that changes the statute in any way if it's been

misapplied or misadministered, and I must strongly point out that the Court is looking at the statute.

(Judge Miller) That is what I am looking at, and it seem to me it does not say what you are saying it says.

(Judge Winter) I think we understand your position [69] on that point pretty well, Mr. Garrett.

(Mr. Garrett) Very well.

(Judge Winter) Is there anything further?

(Mr. Garrett) Your Honor, the only further thing I would mention is that it seems to us clearly that in this case, there are some substantial facts in dispute. We really don't know how many cars are crossing that line or how many cars Alexandria in good faith thinks are crossing that line, or how many cars in those statistics that we've demonstrated everybody knows have never crossed that line.

(Judge Winter) You are talking about how many cars are—

(Mr. Garrett) Coming out of Maryland into Virginia, because their complaint really is that we have stopped the flow of vehicles interstate, and I'm not prepared to demonstrate and I wouldn't even assert, but the affidavit indicates that in a three-day period, at least 56 of those vehicles came out of the District of Columbia.

(Judge Miller) At one time they were titled in Maryland though, so at some point or other, they came from Maryland; isn't that correct?

(Mr. Garrett) They did, but I'm suggesting to Your Honor that our statute will in no way affect the flow of vehicles out of the District of Columbia to Virginia, or should not, or if it does, it should be of no effect on the [70] validity of the statute.

(Judge Winter) All right.

(Mr. Garrett) Thank you, Your Honor.

(Judge Winter) Thank you, Mr. Garrett.

Now, Mr. Ramsey, do you have anything further you would like to say?

(Mr. Ramsey) Two minutes, literally, Your Honor.

I would like to address the Court's attention to the specifics of the statute in question, and that is the trouble which has concerned some of the Judges of the Court as respects whether you can go there and physically inspect this vehicle to see whether it's a stolen car.

It's destroyed. Just like in Goldfinger, they take off the VIN plate, they drop it in, they smash it into a two-foot square. The car is gone. There's no way you go over there and inspect.

You don't send the indemnity until you have, quote, destroyed, close quote, and the statute expressly says, The indemnity agreement and the manufacturer's serial or identification number — this is the VIN plate — shall be satisfactory proof that the vehicle has been destroyed. There's nothing to look at.

(Judge Kaufman) The point is, Mr. Ramsey, that if the VIN plate is taken off before the tower brings it to the processing plant and as a matter of practice the vehicle [71] stays around the processing plant for a while before it is destroyed, it is possible that if an inspector came on a spot check now and then, there might be some way of checking where that car came from, if the VIN plate were still on it.

The point is that if the VIN plate is not on it, I do not see what good it does when the inspector comes there and sees a blue car or a red car or a yellow car or a hundred of them.

(Mr. Ramsey) I agree, Judge Kaufman, and that's my second point that I wanted to call the Court's attention to.

In the Vogt case in 267 Maryland, which inspects the entire history of this matter and talks to the structure of the Act, they point out that all Maryland is really interested in is that Ramsey doesn't go across to Alexandria and say, I'm a scrap processor, and what he has is a can opener to work with.

They want to be sure he has a shredder and a baler and then, says the Court of Appeals of Maryland, If you've got one of these balers you paid a million dollars for, you need 500 hulks a day to make it economically feasible, so you're not going to keep hulks around, they're going to be destroyed. That's what the inspections are for.

(Judge Kaufman) How do you inspect to that extent if the plant is out of the state?

(Mr. Ramsey) Well, they've done it, for the [72] Pennsylvania people and for the Virginia people, Do you have a million-dollar baler and shredder or don't you; yes, you do, there it sits.

(Judge Kaufman) How do you know they use it, rather than just throw the stuff—

(Mr. Ramsey) That's a rather expensive hobby, to sit around with a baler and shredder and collect hulks if you're not going to bale and shred the hulks. It's a nice toy to have but it doesn't appeal much unless you're making a movie like Goldfinger.

But basically what the Court of Appeals says is, They're going to look, if you've got one of these things, you're going to be hunting for 500 hulks a day. That's the thrust of what the Court of Appeals says in the Vogt case.

Now, as a practical matter, this is what the Court is interested in, not going over there and looking to check, because you're going to grind them up as fast as you get them, once you have this enormous equipment in place.

But just off the record, and not in this record, we had an inspector from Maryland in Alexandria about a week ago in connection with the problem.

They can and do come down there, but the obvious fact is it is the impact of licensure and the ability to enact the regulation and say, Keep your books in Maryland. Okay, we'll be required to in order to keep our license. If [73] that's what they want, that's what we do.

If on the other hand they say it's no trouble to cross the bridge to Alexandria, that's up to Maryland. They can set their own. If they need their State Police to get them into our plant, if we're that dangerous, then they should revoke our license, we don't belong in business at all.

I would simply say this further to the Court and then I'll subside.

Maryland towers are the ones who execute these indemnity agreements and then the processor signs at the bottom to certify he destroyed, so they're Marylanders. If there's anybody telling untruths, it's the tower who mispresents it to the processor.

(Judge Miller) The tower is not licensed. He can be from out of state, can he not?

(Mr. Ramsey) Of course. He can be from anywhere. But it's not the processor. The processor simply says, I destroyed this vehicle this man delivered to me and indemnified me on.

And basically, again coming back to the point which has been repeatedly made, there wasn't anything that said you couldn't collect on these cars if they were Maryland titled cars.

And that, if the Court please, I think fully presents the material I wanted to argue.

[74] (Judge Winter) Thank you very much, gentlemen. We will take the case under consideration.

The Court will adjourn until further call.

(Thereupon, at 5:10 o'clock p.m., the hearing was concluded.)